SUPREME COURT OF THE UNITED STATES.

No. 245.

MANUEL RODRIGUEZ, APP'T,

VS.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

"Butano."

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1 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered that on this twenty-fourth day of February, anno Domini one thousand eight hundred and fifty-three, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board, in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Manuel Rodriguez for the place named "Butano" was presented, and ordered to be filed and docketed with No. 627, and is as follows, to wit:

(*Vide* page 3 of this transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *November 3rd*, 1853.

2 In case No. 627, Manuel Rodriguez, for the place named "Butano," the deposition of Maximo Martinez, a witness in behalf the claimant, taken before Commissioner R. Aug. Thompson, was filed.

(*Vide* page 5 of this transcript.)

SAN FRANCISCO, *July 25th*, 1854.

In the same case the depositions of John H. Watson and Cornelio Perez, witnesses in behalf of the claimant, taken before Commissioner Peter Lott, were filed.

(*Vide* pages 6 and 8 of this transcript.)

SAN FRANCISCO, *September* 1, 1854.

In the same case the deposition of Blas Antonio Escamilla, a witness in behalf of the claimant, taken before Commissioner Peter Lott, was filed.

(*Vide* page 11 of this transcript.)

SAN FRANCISCO, *September* 12, 1854.

Case No. 627, on motion of the counsel for the claimant, with the consent of the U. S. law agent, was ordered to be placed at the foot of the 2nd class cases on the trial docket.

SAN FRANCISCO, *October* 17, 1854.

Case No. 627 was submitted under the rule of March 27, 1854.

3 SAN FRANCISCO, *November* 28, 1854.

In the same case the deposition of Gustavus W. Bekh, a witness in behalf of the claimant, taken before Commissioner Peter Lott, was filed.

(*Vide* page 12 of this transcript.)

SAN FRANCISCO, *February* 6, 1855.

In the same case Commissioner R. Aug. Thompson, delivered the opinion of the board confirming the claim.

(*Vide* page 31 of this transcript.)

And the following order was made, to wit:

(*Vide* page 36 of this transcript.)

Petition.

To the U. S. land commission for the ascertaining and settling of private land claims in California:

The petition of Manuel Rodriguez respectfully showeth unto your hon. board that he is the owner of a tract of land known as "Butano," and for further explanation alleges:

4 That Ramona Sanchez, in the month of September, 1837, made and presented her petition in writing to the governor of California, soliciting for herself the grant of the land called "Butano," and that said Sanchez, after all reports having been made in her favor, obtained a grant for the same on the 19th Feb., 1838.

That said grant not having been executed with all the formalities then required by the Mexican laws, said Ramona Sanchez on the 8th of November, 1844, applied once more to the government of California for other and more formal documents, and that after renewed references and reports, she was declared the lawful owner of said land by Governor Micheltorena on the 13th day of November, 1844, and obtained the documents conferring title on the same day.

That your petitioner for a valuable consideration purchased said land on the 22nd of March, 1852, and is now the owner thereof.

5 And your petitioner further saith that all the documents above referred to as petitions, references, reports the first grant, a certified copy of the second grant and map are on file among the archives of California now in the possession of the U. S. surveyor general for California, and that duly certified copies and translations thereof are herewith submitted.

That the original grant has been in the hands of your petitioner until a few months ago, when your petitioner handed it to one J. H. Watson to bring it to your petitioner's attorneys; that said Watson alleges to have lost said grant, but that your petitioner is able to prove the execution and the contents of said grant.

And your petitioner further saith that said land is situate in the county of Santa Cruz, known by the name of "Butano" and bounded

on the south by the rancho of Simeon Castro and the west by the sea; on the north by the rancho of Juan Gonzales, and on the east by the minuta, containing altogether one square league more or less.

And your petitioner further saith that he is in the quiet and peaceable possession of the lands above described and is not
6 aware of the existence of any title conflicting with or superior to his own.

He therefore claims to be the lawful owner of said land, and prays that your Honorable body will confirm and validate his claim and title thereto.

CLARKE, TAYLOR & BECKH,
Att'ys for Rodriguez.

Filed in office Feb. 24, 1853.
(Signed) GEO. FISHER, *Sec'y.*

Dep. of Maximo Martinez.

OFFICE OF THE BOARD OF COMMISSIONERS, &c., &c.

This day, before Com'r R. Aug. Thompson, came Maximo Martinez, a witness in behalf of Manuel Rodriguez, No. 627, who, after being duly sworn, deposed as follows:

Testimony in behalf of claimant.

Present: J. Clarke, esq., att'y for claimant, and R. Greenhow, esq., ass't law agent.

7 Witness states his name to be Maximo Martinez; his age sixty-three, and his residence Santa Clara county, Cal'a.

Questions by claimant's att'y.

Do you know the rancho called Butano, claimed in this case? If so state what you know of its occupation and improvement by Ramona Sanchez.

Answer. I know said rancho; it is situated on the sea-coast, in the county of Santa Cruz. It was first occupied in 1838, by the children of Ramona Sanchez, the widow of Vinanc os Galindo, under to title or —— from Gov. Alvarado. She afterwards, in 1844, got a title from Gov. Micheltorena.

They built a house on it, in which they lived, erected corrals, had a stock of cattle on it, and cultivated portions of it.

Two of the said children died, and the remaining one went to live with the mother, who then sold the land to the present claimant, Manuel Rodriguez, who has resided on it and occupied it from that time to the present.

8 his
MAXIMO + MARTINEZ,
mark

Sworn to and subscribed before me Nov. 3, 1853.
(Signed) R. AUG. THOMPSON.
Com'r.

Filed in office Nov. 3, 1853.
(Signed) GEO. FISHER, *Sec'y.*

Dep. of J. H. Watson.

Case No. 627.

OFFICE OF THE BOARD OF COMMISSIONERS.

This day, before Com'r Peter Lott, came John H. Watson, a witness in behalf of Manuel Rodriguez, No. 627, who, after being duly sworn, deposed as follows:

The U. S. associate law agent is present.

Questions by claimant's counsel.

1st. q. What is your name, age, residence and occupation?

A. My name is John H. Watson; age, upwards of 25, residence and my occupation, that of a farmer.

9 2nd q. Do you know Manuel Rodriguez, the claimant in this case, and if so, how long have you known him?

A. I have known him ever since the spring of 1850.

3rd q. Did he ever place any papers in your hands relative to this claim, and if so, when, and for what purpose?

A. About the time of the first assembling of the land commission he placed certain papers relative to this claim in my hands for presentation to the board. I was then his attorney for that purpose.

4th ques. What papers were they?

A. The original title papers of the Butano ranch.

5th ques. What became of those papers?

Ans. I enclosed them, by his order, in an envelope directed to Clarke, Taylor & Beckh, the claimant's attorneys, and sent them by mail to them at San Francisco.

6th ques. About what time was that done?

10 Ans. About three or four months after the commission met. I had then ceased to be attorney for the claimants.

7th q Do you know anything in regard to their receipt by the claimant's attorney?

Ans. I know nothing of it, but was informed by the claimant's attorney that they were not received.

8th ques. Were you familiar with the title papers, and had you examined them?

Ans. I had them some three or four months, frequently saw them, and though I read Spanish imperfectly at that time, I was sufficiently familiar with them to be able to state that the papers on file in this cause, certified by the surveyor general, are copies of the title papers I had in my possession. Having written the transfer from Ramona Sanchez to the claimant, and having been on the rancho, as

11 well as from my knowledge of the papers, I am fully satisfied on this point.

9th ques. Look at the paper on file in this cause purporting to be a conveyance from Ramona Sanchez to the claimant, and state what you know, if anything, of its execution.

A. I wrote and saw it executed by her, and signed it at her request as an attesting witness, and also saw J. Noyasa sign it in the same capacity.

JNO. H. WATSON.

Subscribed and sworn to before me on this 25th day of July, A. D. 1854.

PETER LOTT,
Commissioner for taking testimony, &c.

Filed in office July 25, 1854.
(Signed) GEO. FISHER, *Sec'y.*

Dep. of Cornelio Perez.

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISCO, *July 25th*, 1854.

This day personally came before Peter Lott, commissioner for taking testimony to be used before the board of U. S. land comm'rs
12 in said State, Cornelio Perez, a witness on behalf of the claimant, Manuel Rodriguez, in case No. 627 on the docket of said board, and said witness, being duly sworn, deposed in Spanish, which was interpreted into English by the interpreter to said board, as follows:

The U. S. associate law agent present.

Questions by claimant's counsel.

1st ques. What is your name, age, and residence?

Answer. My name is Cornelio Perez; my age, 43 years; my residence, Santa Cruz county, California.

2nd question. Do you know the rancho "Butano;" if yea, how long have you known it and what do you know of its occupation?

Answer. I do know it; I have known it since 1837. In that year a son of Ramona Sanchez occupied the place for her; he built a house and corral on the place; he had more than four hundred head of cattle there and a few horses; he fenced in and planted a portion
13 of the land. The place was thus occupied for some eight years when Manuel Rodriguez purchased the place, and continued to occupy the place; had cattle and horses, houses, fields, and cultivated the land, and the place is still owned and occupied by him.

3rd question. Do you know the boundaries of said rancho? If yea, state them.

Answer. I know the boundaries on the north; the Arroyo del Butano is the boundary on the east, the Cañada del Frijol on the south, and west by the sea, and there is also another cañada on the east, which has no name, through which the road from Santa Cruz to San Francisco passes.

4th question. How much land is embraced within the boundaries you have mentioned?

Answer. One league.

5th question. On which side of said rancho does the land of the heirs of Simeon Castro lie?

Answer. In a southeasterly direction.

14 *Cross-examined by U. S. associate law agent.*

1st question. How do you know the boundaries you have mentioned; have you ever traced them or travelled over them?

Answer. I know them from what the deceased, José Antonio Galindo, often told me, and from their being recognized as the boundaries by all the neighbors. I have often been over the boundaries myself, and know them well. I never heard of their being disputed by the colindantes, or any one else, and I have been acquainted there for some 17 years.

his
CORNELIO + PEREZ.
mark.

Subscribed and sworn to before me July 25th, 1854.
PETER LOTT, *Com'r, &c.*

Filed in office July 25, 1854.
(Signed) GEO. FISHER, *Sec'y.*

Dep. of Blas Anto. Escamilla.

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISCO, *Sept.* 1, 1854.

This day, before Peter Lott, commissioner for taking testi-
15 mony to be used before the board of U. S. land commissioners in said State, Blas Antonio Escamilla, a witness on behalf of the claimant, Manuel Rodriguez, in case No. 627 on the docket of said board, and said witnesss, being sworn, deposed in Spanish, which is interpreted by the interpreter to said board as follows:

The U. S. associate law agent is present.

Questions by Judge Campbell, att'y of claimant.

1st question. What is your name, age, and residence?

Answer. My name is Blas Antonio Escamilla; my age, 31 years; my residence in Santa Cruz county, California.

2d question. Are you acquainted with the rancho of Butano claimed by Manuel Rodriguez? If yea, state what you know of its extent and boundaries.

Answer. I know the place, have known it ever since 1842; I have frequently been on the place and passed over it. I know its
16 boundaries, and they embrace about one square league, rather less; the rancho is in Santa Cruz county.

Cross-examined by U. S. associate law agent.

1st question. What is the shape of the rancho, and how long and wide?

Answer. It is an irregular oval form, wider at one end than the other. It is a little more than a league in length, and less than a league wide; the widest part is about 2,000 varas.

BLAS A. ESCAMILLA.

Subscribed and sworn to before me on this 1st day of September, A. D. 1854.

PETER LOTT, *Com'r, &c.*

Filed in office Sept. 1, 1854.
(Signed) GEO. FISHER, *Sec'y.*

Dep. of Gustavus W. Beckh.

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISCO, *Nov.* 27, 1854.

This day came before Peter Lott, commissioner for taking
17 testimony to be used before the board of U. S. land commissioners in said state, Gustavus W. Beckh, a witness on behalf of the claimant, Manuel Rodriguez, in case No. 627 on the docket of said board, and said witness, being sworn, deposed as follows:
The U. S. associate law agent is present.

Questions by Judge Campbell for claimant.

1st question. What is your name, age, and residence?

Answer. My name is Gustavus W. Beckh; my age, 26 years; my residence, San Francisco, California.

2nd question. Were you, at the time of the organization of this land commission, a member of the law firm of Clark, Taylor and Beckh, in this city; if yea, how long did you continue to be a member of said firm?

Answer. I was a member of said firm, and continued to be so till July, A. D. 1853.

3rd question. Were you during that period in the habit of receiving letters and communications addressed to that firm generally and
18 particularly in relation to their business before said land commission?

Answer. I was.

4th question. State what you know, if anything, relative to the receipt of any title paper or other documentary evidence bearing upon this case.

Answer. We never received the original grant nor any original papers in this case. John H. Watson once told me he had had the original grant in this case in his possession, and had sent it by mail to our said firm, from his place, which I think was south of this, at Monterey or Santa Cruz. But it was never received by me nor by any of the firm, to my knowledge.

G. W. BECKH.

Subscribed and sworn to before me on this 27th day of November, A. D. 1854.

PETER LOTT,
Commissioner, &c.

The foregoing deposition may be read and considered as
19 evidence now the same as though taken before the case was

submitted, saving, however, the objection as to the competency of the matter testified to the same being hearsay.

J. H. McKUNE,
U. S. Law Agent.

Filed in office Nov. 28, 1854.
(Signed) GEO. FISHER, *Sec'y.*

1 *S. D. K.*

Espediente.

Promovido por D'a Ramona Sanchez en pretencion del parage conocido con el nombre del "Butano."

2 *S. D. K.*

(No. 385.)

Espediente.

Promovido por Ramona Sanchez en pretencion del parage llamado "Bolsa del Butano."

20

3 *S. D. K.*

MONTEREY, *Sept'b.* 29 *de* 1837.

Ynforme el adm'r de la exmision de St'a Cruz si la interesada en esta solicitud obtiene todos los requisitos legales para ser atendida en su solicitud; si el terreno q'e pretende es valdio si no pertenece á la propiedad particular de algun individuo pueblo ó mision y si se halla en estado de adjudicar se en colonisacion conforme á las leyes.

Evacuados estos informes volverá el esped'te al gob'no para su resolucion.

ALVARADO.

EX'MO S'OR GOBERNADOR: Ramona Sanchez viuda del finado Berancio Galindo, ante V. S. como mejor haya lugar y con el debido respeto hace presente que hayandose cargado de familia y con algunas bienes los que no tiene un lugar donde asegurarlos pasa ò manifestar q'e á distancia de diez leguas apartadas de la mision de S'ta Cruz á la parte del norte ha visto un sitio valdio aproposito pa. contener en el su ganado y hacer algunos labores pa. subvenir á la mantencion de su familia; el cual lo demuestra el adjunto diseño que se acompaña y pide una legua de longitud y media de latitud y P. T. A. V. E. rendidadam'te supplica q'e haga un uso de sus facultades en obsequia de una desamparada mujer gra-

21 cia que no duda alcansar y á la que vivira reconocido.

S. A. S.
RAMONA SANCHEZ.

4 *S. D. K.*

Sello quinto, medio real.

Habilitado provisionalm'te por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta y cuatra y mil ochocientos cuarenta y cinco.

MICHELTORENA,
PABLO DE LA GUERRA.

5 *S. D. K.*

A.—Esped'te continued.

MONTEREY, *Nov'e 9 de* 1844.

Informe el s'r s'rio del despacho tomando los q'e crea necesario.

MICHELT'A.

[SELLO.] EX'MO S'OR GOBERNADOR: José Antonio Galindo, natural de este departamento y vecino de la jurisdiccion de S'ta Cruz, ante V. E. con el mas debido respeto dice. Que desde el año de 1838 estamos poseando el parage conocido con el nombre del "Butano" mi madre D'a Ramona Sanchez y yo como su primer hija mayor emancipado, segun demuestra el adjunto documento provicional que se espidio por E. S. ex-gobernador D'n Juan B. Alvarado antesesor de V. E. quien desde aquel tiempo nos adjudico
22 el mencionado terreno, P. T. A. V. E. pido y suplico á nombre de mi señora madre se me conceda la revalidacion del titulo respectivo para solicitar la posesion juridica devestilo y trabajar anbelosamente en union de mi espresada madre jurando no ser de malicia y lo necesario, &c.

Monterey, Noviembre 8 de 1844.

JOSE A. GALINDO.

S'OR GOBERNADOR: Por el titulo provicional que acompaña el interesado y por los buenos informes que tambien es adjunto; verá V. E. que no hay inconveniente para que se le conceda el titulo en propiedad teniendo por lindero precisam'te el rancho de los herederos del finado D'n Simeon Castro; la superior disposicion de V. E. será lo que mejor convenga.

Monterey, Noviembre.

6 *S. D. K.*

Sello quinto, medio real.

Habilitado provisionalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.
23

MICHELTORENA.
PABLO DE LA GUERRA.

[SELLO] 13 de 1844.

MAN'L JIMENO.

MONTEREY, *Nov'e* 13 *de* 1844.

Revalidase.

MICHELT'A.

7. *S. D. K.*

MONTEREY, *N'bre* 13 *de* 1844.

Vista la peticion con que da principio este espediente los informes que aparesen en este mismo con todo lo demas que se tubo presente y ver convino de conformidad con las leyes y reglamentos de la ma-

teria declaro á D'a Ramona Sanchez dueña del paraje nombrado Botano colindante con el rancho de los heredoros del finado Simeon Castro con la sierra y el mar. Librese el correspondt'e despacho, tómese razon en el libro respectivo. El E. S. gobernador asi lo mando, decretó y firmo.

(Here follows diseño, marked page 24.)

24 8. *S. D. K.*

25 9. *S. D. K.*

Si á V. S. le parece bien puede darle el terreno que solicita la interesada pertenese de esta mision pero no se ocupo para nada es baldio y de temporal.

S'ta Cruz, Octubre 11 de 1837.

JUAN GONZALES.

A.—Espediente continued.

MONTEREY, *Feb'o* 19 *de* 1838.

Visto el informe que antecede del adm'or de la comision de S'ta Cruz con esta f'ha se concedio provicionalm'te á la interesada un sitio de ganado mayor el parage referido sugetandose al resultado de este esped'te despues de haber corrido los tramites correspondientes.

ALVARADO.

10. *S. D. K.*

MONTEREY, *Marzo* 16 *de* 1839.

Ynforme el s'or prefecto del primer distrito sobre el contenido en esta instancia.

ALVARADO.

PUEBLO DE S. JUAN DE CASTRO, *M'o* 20, *de* 1839.

El prefecto del 1'er districto informa que estando valdio el terreno que solicita la parte de D'a Ramona Sanchez debe adjudicarsele.

JOSÉ CASTRO.

(Sello.)

26 Juan B. Alvarado, gefe sup'r politico int'o de la Alta California. Por cuanto Ramona Sanchez ha pretendido para su beneficio personal y el de su familia el terreno conocido con el nombre del Butano segun consta del expediente respectivo, practicados los informes convenientes en decreto de este dia he venido en concederle el mencionado paraje con estencion de un sitio de ganado mayor entendiendose dicha concecion provisional y sugetandose á la aprovacion ó desaprovacion de la ex'mo diputacion.

Es dado en Monterey del departamento de las Californias á diez y nueve de Feb'ro de mil ochocientos treinta y ocho.

JUAN B. ALVARADO.

12. *S. D. K.*

El c'no Manuel Michelt'a, general de brigada del ejercito Mejicano, ayudante g'ral de la plana mayor del mismo gobernador comand'te g'ral é inspector del departamento de las Californias.

Por cuanto D'a Ramona Sanchez ha pretendido para su beneficio personal y el de su familia la revalidacion del titulo pro-
27 vicional que se le dio desde el año de 1838 del terreno que se le concedio nombrado el Butano, colindante con el rancho de los herederos del finado D. Simeon Castro con la serrania y el mar practicadas previam'te los diligencias y averiguaciones concernientes segun lo dispuesto p'r leyes y reglamentos usando de los facultades que me son conferidas á nombre de la nacion Mejicana he venido en concederle el terreno mencionado declarandole la propiedad de el por las presentes letras sujetandose á la aprovacion ó desaprovacion de la E. asamblea departamental y bajo las condiciones siguientes.

1ª. No podra venderlo enagenarlo ni hipotecarlo, imponer senso, vinculo ni otro gravamen alguno.

2ª. Podra cercarlo sin perjudicar las travecias, caminos y servidumbres ; lo disfrutara libre y esclusivamente destinandolo al uso ó cultivo que mas le acomode.

13. *S. D. K.*

3ª. Cuando se le confirme la propiedad de el solicitara del
28 juez respectivo que le de la posesion juridica en virtud de este despacho por el cual se demarcaran los linderos en cuyos limites pondrá á mas de las mojoneras algunos arboles frutales ó silvestres de alguna utilidad.

El terreno de que se hace donacion es de un sitio de ganado mayor. El juez que diere la posesion lo hara medir conforme á ordenanza quedando el sobrante que resulte á la nacion para los usos convenientes.

4ª. Si contraviniere á estas condiciones perderá su derecho al terreno y sera denunciable por otro.

En consecuencia mando que sirviendole el presente y teniendose por firme y valedero se tome razon de el en el libro á que corresponde para su resguardo y demas fines. Dado en Monterey á catorce de N'bre de mil ochocientos cuarenta y cuatro.

MANUEL MICHET'A.
MANUEL JINENO, *S'rio.*

29 Queda tomada razon de este despacho á fojas 12.

JIMENO.

OFFICE OF THE SURVEYOR GENERAL
OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, surveyor general of the United States for the State of California, and as such now having in my office, and under my control and custody, a portion of the archives of the former Spanish and Mexican territory or department of Upper California, do hereby certify that the thirteen preceeding and hereunto annexed pages of tracing paper, numbered from one to thirteen, inclusive, and each of which is verified by my initials, (S. D. K.,) exhibit true and acurate copies of certain documents on file, and forming part of the said archives in this office.

In testimony whereof I have hereunto signed my name
[SEAL.] officially and affixed my private seal (not having a seal of office) at the city of San Francisco, Cal., the 26th day of January, 1853.

30 SAM'L D. KING,
Surv'y'r Gen'l Cal.

Filed in office Feb'y 24th, 1852.

GEO. FISHER, *Sec'y.*

Translation of espediente.

1837.

Record of proceedings at the instance of D'a Ramona Sanchez, soliciting the location known by the name of Butano.

385.

Excellent Sir Governor:

I, Ramona Sanchez, widow of the deceased Benancio Galindo, in the best manner and with due respect represent before you:

That being burthened with a family and some stock, for the safe keeping of which I have no place, I proceed to show, that at a distance of ten leagues from the mission of Santa Cruz, towards the north, I have seen a vacant sitio adapted to keep my cattle on and carry
31 on some husbandry for the maintainance of my family, which land is exhibited in the adjoined sketch I accompany, and I ask for one league in length and half a league in breadth, and therefore I humbly pray your honor to make use of your powers in favor of an unprotected woman, a concession which I don't doubt to obtain, and for which I shall remain much obliged to you.

Your obedient servant,

RAMONA SANCHEZ.

(In the margin.)

MONTEREY, *September 29th*, 1837.

The administrator of the ex-mission of Santa Cruz will report whether the interested party in this instance is possessed of all the legal qualifications for her solicitation being admitted; whether the land she solicits is vacant; whether it does not belong to any particular property of any individual, pueblo or mission, and whether it is in a state of being adjudicated to colonization conformable to law.

This report being concluded, the espediente will be returned to the government for its resolution.

32 ALVARADO.

Excellent Sir Governor:

José Antonio Galindo, a native of this department and resident in the jurisdiction of S'ta Cruz, with the highest respect, says before you:

That since the year 1838 we have been possessed of the location known by the name of "Butano," namely, my mother, D'a Romana

Sanchez, and I, as the first son having attained majority and been emancipated, as is shown in the adjoined provisional document, which was made out by the ex-governor Dn. Juan B. Alvarado, your excellency's predecessor, who from that time adjudicated us the mentioned land.

Therefore I ask and pray your excellency, in the name of my mother, to grant me a ratification of the respective title, in order to solicit the prescribed juridical possession, and to work energetically in unison with my said mother.

33 I swear there is no malice herein and to what else necessary, etc.

Monterey, November 8th, 1844.

JOSE A. GALINDO.

(In the margin.)

MONTEREY, *Nov. 9th*, 1844.

The secretary of state will report, taking those other reports he may deem necessary.

MICHELTORENA.

SIR GOVERNOR: By the provisional title deed which the interested party accompanies, and by the favorable reports appearing in the expediente, which also is annexed, your excellency will see that there is no obstacle to granting him the title deed of ownership, having for boundaries precisely the rancho of the heirs of the deceased D'n Simeon Castro.

Your excellency's superior determination will, however, be such as best to suit.

Monterey, November 13th, 1844.

MANUEL JIMENO.

MONTEREY, *November* 13*th*, 1844.

Be it ratified.

MICHELTORENA.

34 MONTEREY, *November* 13*th*, 1844.

In view of the petition with which this expediente commences, the reports appearing in the same, with whatever else to be borne in mind and was to the purpose, in conformity with the laws and regulations on the subject, I declare D'a Ramona Sanchez owner of the location called Butano, bordering on the rancho of the heirs of the deceased Simeon Castro, on the sierra, and the sea.

Let the corresponding document be issued and entered in the respective book.

The governor thus ordered, decreed, and signed it.

If it appears expedient to you, the interested party can be given the land she solicits. It belongs to this mission, but it does not occupy it for anything. It is vacant and irrigated seasonably.

Santa Cruz, October 11, 1837.

JUAN GONZALES.

MONTEREY, *Febr'y* 19*th*, 1838.

In view of the foregoing report of the administrator of the
35 ex-mission of Santa Cruz, the interested party was under this date granted provisionally one square league in the said locality, while the result of this expediente falls out after the corresponding process having been carried on.

ALVARADO.

MONTEREY, *March* 16*th*, 1839.

The prefect of the 1st district will report on the contents in this instance.

ALVARADO.

PUEBLO DE SAN JUAN DE CASTRO, *March* 20*th*, 1839.

The prefect of the 1st dsitrict reports that the land solicited by the party, D'a Ramona Sanchez, being vacant, it ought to be adjudicated to her.

JOSE CASTRO.

Juan B. Alvarado, superior political chief ad interim of Upper California.

Whereas Ramono Sanchez has solicited, for her personal benefit and that of her family, the land known by the name of Butano, as is shown in the respective espediente, after having taken the
36 necessary reports, I have in decree of this day's date concluded to grant her the mentioned location, in extent one square league, (sitio de ganado mayor,) said concession being understood to be provisional and except to the approbation or disapprobation of the excellent deputation.

Given in Monterey, in the department of California, on the 19th of September, 1838.

JUAN B. ALVARADO.

The citizen Manuel Micheltorena, brigadier general of the Mexican army, adjutant general of the plana mayor, governor, commander general and inspector of both Californias:

Whereas D'a Ramona Sanchez has solicited, for his personal benefit and that of her family, the ratification of the provisional title given her from the year 1838 to the tract of land granted her called Butano, bordering on the rancho of the heirs of the deceased D'n Simeon Castro, on the serrania, and the sea, after having previously taken the necessary action, and made the necessary investigations,
37 according to the requirements of law and regulations, in exercise of the powers vested in me in the name of the Mexican nation, I have concluded to grant her the mentioned land, declaring it her property by the present letters patent, subject to the approbation or disapprobation of the excellent departmental assembly, and under the following conditions:

1st. She shall not have the power to sell, alienate, or mortgage it, nor to subject it to rent, entail bond, or any other incumbrance.

2nd. She may fence it without prejudice to the crossings, roads or servitudes; she will enjoy it freely and exclusively, appropriating it to the use or culture that best may suit her.

3rd. When the ownership shall be confirmed to her she will solicit of the respective judge to give her juridical possession in virtue of this document, by whom the boundaries are to be marked, on the extremities of which, besides its land marks, she will put some fruit trees or wild ones of some utility.

The land donated is one square league (sitio de ganado
38 mayor.) The judge who shall give the possession will cause it to be measured conformable to ordinance, leaving the surplus that may result to the nation for convenient purposes.

4th. If she should violate these conditions she will lose her right to the land, and may be denounced by some other party.

Consequently, I order that these presents, serving her as a title deed, and being held firm and valid, it be entered in the corresponding book for her security and other purposes.

Given in Monterey on the 14th of November, 1844.

MAN'L MICHELTORENA.

MANUEL JIMENO, *Secretary.*

Entered this document on folio 12.

JIMENO.

Filed in office.
(Signed) GEO. FISHER,
Sec'y.

39 *"C."—Deed from Sanchez to Rodriguez.*

SANTA CLARA,
State of California.

SAN JOSE, *March* 22, 1852.

This indenture entered into between Ramona Sanchez, of the county and State aforesaid, of the first part, and Manuel Rodriguez of the second part, city and State aforesaid, witnesseth, that for and in consideration of the sum of two thousand dollars in hand paid, the receipt whereof is hereby acknowledged, the party of the first part hath granted, bargained, and sold unto the party of the second part, his heirs and assigns forever, all her right, title, interest, and claim in and to the following described premises, viz: One league of land situate in the city of Santa Cruz, bounded on the south by the rancho of Simeon Castro, on the west by the sea, on the north by the rancho of Juan Gonzales, on the east by the Monuta; said league was granted by Manuel Micheltorena in Nov., forty-four, to the party of the first part, to have and to hold all the above-described premises, together with the appurtenances thereunto belonging unto the party of
40 the second part, his heirs and assigns forever.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year aforesaid.

her
RAMONA × SANCHEZ. [L. S.]
mark.

Signed, sealed, and delivered in presence of,
JNO. H. WATSON.
ANTO. YNOJOSA.

STATE OF CALIFORNIA,
County of Santa Clara.

On this 24th day of March, A. D. 1852, personally appeared before me, a notary public in and for the county aforesaid, John H. Watson, the first subscribing witness who is personally known to me, and who, being first sworn by me upon his oath, said that he was present at the execution of the above indenture in this city on this day, and that the said witness having fully explained the contents thereof to Ramona Sanchez, she freely and voluntarily signed the same for
41 the uses and purposes therein mentioned.

Given under my hand and private seal, (no official seal having yet been provided) on the day and year first above
[SEAL.] mentioned, at the city of San José.

THO'S L. VERMENTO,
Notary Public.

I hereby certify that the foregoing is recorded in the Book of Deeds, &c., vol. 1, pages 305 and 306 of the records of the recorder's office of county of Santa Cruz, California, and was filed March 30th, 1852, at 10 o'clock a. m.

PETER TRACY, *City Recorder.*

Filed in office Feb. 24, 1853.
(Signed) GEO. FISHER, *Sec'y.*

Opinion of the board by Com'r R. A. Thompson.

MANUEL RODRIGUEZ
vs.
THE UNITED STATES.

Claim for one square league of land, called Butano, in Santa Cruz county.

The petitioner, as evidence of his title, has introduced and
42 proved a deed to him for the premises claimed, executed on the 22nd of March, 1852, by Ramona Sanchez, to whom he alleges an informal grant of the land was made by Governor Alvarado, on the 19th of February, 1838, which grant was subsequently ratified and confirmed, and a title in due form of law issued to her by Gov. Micheltorena, on the 13th of November, 1844. The original grant is not produced, but it is alleged in the petition that the same was in the possession of the claimant until within a few months of the filing of his claim; that it was then handed by him to one J. H. Watson, to be transmitted to his attorneys; that said Watson declares he has not the same, and he therefore tenders proof of the then existence and contents of the said grant.

John H. Watson, whose deposition is taken and filed in the case, deposes that about the time of the first assembly of this commission,

the claimant, Manuel Rodriguez, placed in his hands the original title papers of the Butano rancho, for presentation to the board; that he enclosed them, by order of the claimant, in an envelope directed
43 to Clark, Taylor & Beckh, his attorneys, and sent them by mail to them at San Francisco, about three or four months after the commission met, and that he has since been informed by said attorneys that they never received them.

Gustavus W. Beckh deposes that he was a member of the firm of Clark, Taylor & Beckh, from the time this board of commissioners was organized up to the month of July, 1853; that during that period he was in the habit of receiving letters and communications addressed to that firm generally, and particularly in relation to their business before said land commission; that he was informed by John H. Watson that he had had the original grant in this case in his possession, and had sent it by mail to their said firm from his place either at Monterey or Santa Clara; but that neither the said original grant, nor any original papers in said case, were ever received by him, nor by any other member of said firm, to his knowledge.

This is all the proof the claimant has adduced by the loss of his original title papers. It is not so full and satisfactory as could
44 be desired, but, under the circumstances, it is considered sufficient to lay the foundation for the introduction of secondary evidence. The rule of law, as laid down in the books on this subject, is that the object of the proof is to establish a reasonable presumption of the loss of the instrument, and it may be either direct when the loss or destruction is positively proved, or circumstances, as when the instrument was deposited in a particular place or with a particular person, and due search and enquiry has been made in the place, and of the person with whom it was likely to be found. This evidence is addressed to the sound discretion of the court, in view of all the circumstances of the case, to decide whether the non-production of the original has been sufficiently accounted for to authorize the introduction of secondary evidence. In 4th Con. and Hill's notes to Philips on Evidence, page 405, the fact that the instrument was put into the mail, directed to a particular person and never reached its destination, is stated as a sufficient ground to raise a presumption of its loss.
45 In the present case the fact that the document was deposited in the mail and directed to the law firm of Clark, Taylor and Beckh is distinctly proved, and although the evidence of its non-reception by them is not so complete as it might be, yet, in view of all the circumstances, and in the absence of any suspicion of fraud or any possible motive on the part of the claimant or his counsel, to withhold the document, we think it is sufficient for the purpose for which it is introduced.

The claimant has also introduced a traced copy from the archives of the Mexican government in California, certified by the United States surveyor general, containing the petition of the original grantee for the grant, and the proceedings of the government thereon, and concluding with the original provisional grant by Governor Alvarado, dated Sept. 19th, 1838, and a copy of the formal title issued by Gov. Micheltorena on the 14th of November, 1841. John H. Watson

swears that he had the original title papers to the land in his possession some three or four months, and was sufficiently familiar
46 with them to be able to state that the papers on file in the case certified by the surveyor general are copies of the same. Although the evidence on this point is exceedingly loose and unsatisfactory, yet (taken in connection with the full and minute record of the proceedings of the Mexican authorities in relation to the grant, the original provisional grant issued by Governor Alvarado, and the copy of the more formal title from Governor Micheltorena contained in the espediente, together with the continued occupation and cultivation of the premises by the grantee from a period anterior to the first grant down to the year 1852, when she sold it to the present claimant,) we think it is sufficient, the due execution and delivery of the grant, and to entitle the petitioner to a confirmation.

The boundaries of the land are well defined and the quantity shown to be less than that called for by the grant.

A decree of confirmation will be entered.

Filed in office Feb. 6, 1855.

GEO. FISHER, *Sec'y.*

47 Recorded in Record of Decisions, vol. 2, page 517.

GEO. FISHER, *Sec'y.*

Decree.

MANUEL RODRIGUES
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the said petitioner is valid, and it is therefore decreed that the same be confirmed.

The land of which confirmation is made is situated in the county of Santa Cruz, being the same which was granted to Ramona Sanchez in 1844, and held and occupied by her until she sold to the present claimant in 1852. It is known by the name of Butano, and is bounded as follows: By the rancho of the heirs of the deceased Simeon Castro, by the Serrania and by the sea, containing one square league. For a more particular description reference to be had to the copy of the original grant and map contained in the espediente in the
48 archives in the custody of the United States surveyor general for California, a traced copy of which is filed among the papers in the case.

ALPHEUS FELCH,
R. AUG. THOMPSON,
S. B. FARWELL,
Commissioners.

Filed in office Feb. 6, 1855.

GEO. FISHER, *Sec'y.*

Recorded in Record of Decisions, vol. 2, page 520.

GEO. FISHER, *Sec'y.*

And it appearing to the satisfaction of this board that the land hereby adjudicated is situated in the northern district of California, it is hereby ordered that two transcripts of the proceedings in this case, and of the decision, and papers, and evidence upon which the same are founded, be made out and duly certified by the secretary; one of which transcripts shall be filed with the clerk of the United
49 States district court for the northern judicial district of California, and the other be transmitted to the Attorney General of the United States.

Secretary's certificate.

OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing thirty-six pages, numbered from one to thirty-six, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the decision of the said board, of the documentary evidence and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 627 on the docket of the said board, wherein Manuel Rodriguez is the claimant against the United States for the place known by the name of "Butano."

50 In testimony whereof I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, [SEAL.] California, this tenth day of August, A. D. 1855, and of the independence of the United States of America the eightieth.

GEO. FISHER, *Sec'y.*

Endorsed: Filed August 11, 1855.

J. A. MONROE, *Clerk.*

51 *Notice of appeal.*

OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,
Washington, 10 *October*, 1855.

627.—"Butano."—Manuel Rodriguez, claimant.

You will please take notice that in the above case, decided by the commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received at this office on the 27 day of August, 1855, the appeal in the district court of the United States for the northern district of California will be prosecuted by the United States.

C. CUSHING,
Attorney General.

Endorsed: Filed Nov. 22, 1855.

By CHEVERS, *Deputy.*

Petition.

To the honorable district court of the United States in and for the northern district of California:

THE UNITED STATES, appellant,
v.
MANUEL RODRIGUEZ, appellee. } No. 271.

52 The petition of the United States, by their attorney, represented that this cause is an application for a review of the decision of the board of land commissioners, whereby the claim of said appellee was confirmed, as appears by reference to the records in the case; that a transcript of the said record was filed in this court on the —— day of ——; that a notice of appeal was filed on the —— day of ——, and that the land claimed lies in the said district; that the said claim is invalid. Wherefore appellants pray that the said decision of the board be reversed, and that the court decree the said title invalid.

Endorsed: Filed April 1st, 1856.

CHEVERS, *Deputy.*

Answer.

District court of the United States for the northern district of California.

THE UNITED STATES, appellants,
v.
MANUEL RODRIGUEZ, appellee. } No. 271.

Manuel Rodriguez, the above named appellee, by his attorney, denies all and singular the allegations in the petition con-
53 tained, and especially the invalidity of the title of the said appellee.

Wherefore appellee prays that the decision of the board of land commissioners be confirmed, and that the said title be decreed to be valid.

J. CLARKE,
Attorney for claimant.

Endorsed: Filed April 1, 1856.

CHEVERS, *Deputy.*

Decree.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Wednesday the 19th day of November, A. D. 1856.

Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES *v.* MANUEL RODRIGUEZ. } D. C. No. 271.—L. C. No. 627.

This cause came on to be heard on appeal from the decision of the board of commissioners to ascertain and settle private land claims in the State of California, under the act of Congress approved
54 March 3d, A. D. 1851, upon the transcript of the proceedings and decision of said board, and the papers and evidence on which said decision was founded, and it appearing to the court that the said transcript has been duly filed according to law, and the cause having regularly come to a hearing, it is by the court here ordered, adjudged, and decreed that the said decision be, and the same is in all things affirmed, and it is likewise ordered, adjudged, and decreed that the claim of the appellee is a good and valid claim, and that the same be, and is hereby, confirmed.

The land of which confirmation is hereby made is situated in the county of Santa Cruz, being the same which was granted to Ramona Sanchez in 1844, and held and occupied by her until she sold to the present claimant in 1852. It is known by the name of "Butano," and is bounded as follows: By the rancho of the heirs of the deceased Simeon Castro, by the lomeria, and by the sea; containing one square league. For a more particular description, reference to be had to the copy of the original grant and map contained in the espediente in the archives and in the custody of the United States surveyor general for California, a traced copy of which was filed among the papers in the case before said board.

OGDEN HOFFMAN,
U. S. Dis't Judge.

55 The above decree is correct.

W. BLANDING,
Dist. Att'y.

Endorsed: Filed November 19, 1856.

W. H. CHEVERS, *Deputy.*

Stipulation dismissing appeal.

ATTORNEY GENERAL'S OFFICE, 17 *February*, 1857.

SIR: You are hereby instructed to dismiss the appeal in the case of Manuel Rodriguez *v.* the United States.—Number 627 on the docket of the land commissioners.

Respectfully,

C. CUSHING.

WM. BLANDING, Esq.,
U. S. Attorney, San Francisco, Cal.

Endorsed: Filed June, 1857.

W. H. CHEVERS, *Deputy.*

In the district court of the United States for the northern district of California.

THE UNITED STATES
v.
MANUEL RODRIGUEZ. } D. C. 271.—L. C. 627.

56 In pursuance of a notice from the U. S. Attorney General, hereunto annexed, it is hereby stipulated and agreed that no further appeal be taken in this case on the part of the United States, and that claimant have leave to proceed under the decree of this court, heretofore rendered in his favor as under final decree.

San Francisco, June 12, 1857

WM. BLANDING,
Dist. Att'y

J. CLARKE,
Attorney for Claimant.

Endorsed: Filed June 12, 1857.

W. H. CHEVERS, *Deputy.*

Order vacating appeal.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Friday the 12th day of June, in the year of our Lord one thousand eight hundred and fifty-seven.

Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES
v.
MANUEL RODRIGUEZ. } D. C. 271.—L. C. 627.

57 The Attorney General of the United States having given notice to dismiss the appeal in this case, and a stipulation to that effect having been entered into by the district attorney:

On motion of the district attorney, it is ordered, adjudged, and decreed that claimant have leave to proceed, under the decree of this court heretofore rendered in his favor, as under final decree.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed: Filed June 12, 1857.

W. H. CHEVERS, *Deputy.*

Petition for return of survey.

UNITED STATES DISTRICT COURT,
Northern District of California:

THE UNITED STATES
v.
MANUEL RODRIGUEZ. } No. 271.

The petition of Loren Coburn, Jeremiah Clarke, and Daniel Clarke, respectfully shows that petitioners have purchased from Manuel Rodriguez, the claimant in this cause, the tract of land claimed and con-

firmed in this cause by the name of "Butano," and that peti-
58 tioners are now the sole owners of the same, through said purchase.

That said tract was finally confirmed to the extent of one square league, bounded south by the claim of Simeon Castro; east by the mountains, and west by the ocean, no northern boundary being mentioned in said decree.

That on the 14th day of November, 1860, the surveyor general of California approved an official survey purporting to be in pursuance of, and in conformity with said final decree of confirmation, but petitioners state that said survey is erroneous, in that it embraces but three thousand and twenty-five acres, instead of one league, there being no obstacle or difficulty in the way of extending said survey so as to embrace the quantity of one league, as confirmed.

Petitioners state that the first advertisement or notice by said surveyor general of said survey, pursuant to the act of Congress in such case made and provided, was made by publication in the San Francisco Herald on the 20th day of November, 1860.

Petitioners therefore ask for an order of this court, requiring said surveyor general to return said survey to this court for adjudication and correction.

J. CLARKE,
Att'y for Petitioners.

59 Jeremiah Clarke, one of the petitioners above named, maketh oath that the statements in the foregoing petition, touching the interest of petitioners in the tract therein mentioned, are true.

J. CLARKE.

Sworn to and subscribed this 22d Nov., 1860, before me.

W. H. CHEVERS,
U. S. Com'r.

Endorsed: Filed Nov. 22, 1860.

W. H. CHEVERS, *Clerk.*

Order to return survey.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Thursday the 22d day of November, in the year of our Lord one thousand eight hundred and sixty.

Present: the honorable Ogden Hoffman, district judge.

THE UNITED STATES *v.* MANUEL RODRIGUEZ. } In land cases.—District court No. 271.—Land com. No. 627.

60 And now at this day, on application of Jeremiah Clarke, attorney for himself and others, it is ordered that the surveyor general of the United States for California return into this court, on or before Wednesday the 26th day of December, A. D. 1860, his official survey and plat of the land finally confirmed in the above-entitled

cause, known as "Butano," and situated in the county of Santa Cruz, in said district.

And it is further ordered that the United States marshal for this district serve upon the said surveyor general, without delay, a certified copy of this order, and make due return hereon.

SAN FRANCISCO, *Nov.* 20, 1860.

Service of order, personally, by copy on J. W. Mandeville, U. S. surveyor general, in San Francisco, Nov. 22, 1860.

P. L. SOLOMON,
U. S. Marshal.
By S. LAMKIN, *Deputy.*

Endorsed: Filed Dec. 5th, 1860.

W. H. CHEVERS, *Clerk.*

(Here follows map marked page 60.)

60 *Boundaries*

No.	Course.	Distance.	No.	Course.	Distance.
1	S. 62 ° E.	15.90	33	N. 4½° W.	14.50
2	88¾	6.20	34	4 E.	26.80
3	N. 13⅜	4.90	35	¼ W.	19.40
4	73¾	9.30	36	12¾	47.40
5	83	9.10	37	4¼	11.90
6	S. 80½	6.90	38	46	16.10
7	N. 78½	5.60	39	76	35.20
8	40½	13.00	40	87½	7.10
9	71¾	9.90	41	S. 73	3.60
10	59¼	13.10	42	N. 74	16.70
11	S. 82½	6.10	43	63½ W.	48.20
12	46¾	10.30	44	1 E.	17.30
13	1	7.70	45	53½ W.	11.90
14	N. 63	8.50	46	40¾	10.90
15	S. 43¼	10.30	47	19½	14.80
16	38¾ W.	11.20	48	20 E.	5.80
17	20 E.	20.70	49	51¾ W.	43.90
18	57½	6.00	50	29¾ E.	19.40
19	13	19.50	51	45 W.	66.60
20	N. 87¾	14.50	52	S. 5	48.10
21	S. 41½	6.40	53	9¾	16.50
22	61¼	18.30	54	29½	19.70
23	56	10.00	55	16¾	30.50
24	24	5.80	56	3 E	22.50
25	32¾ W.	4.80	57	26¼ W.	7.40
26	5½	8.70	58	29½ E.	24.30
27	40½ E.	4.90	59	12	17.10
28	27	33.50	60	25¼	27.20
29	36	5.50	61	37½	24.20
30	N. 34½	14.50			
31	32½	14.20			*Mls. chs.*
32	12½	16.70		1,027.00	= 12 67

U. S. SURVEYOR GENERAL'S OFFICE, SAN FRANCISCO,
California, Nov. 24th, 1860.

I hereby certify this to be a full, true, and correct copy of the original plat, on file in this office, of the official survey of the Butano rancho, "finally *to* confirmed to Manuel Rodriguez."

In witness whereof, I have hereunto signed my name and caused the seal of this office to be affixed this twenty-fourth day of November, one thousand eight hundred and sixty.

[SEAL.]

J. W. MANDEVILLE,
U. S. Surveyor Gen'l Cal'a.

The field-notes of the Butano rancho, from which this plat has been made out, have been examined and found correct. The location is made in accordance with the decree of the U. S. district court, and, as such, is approved; but upon examination is found to cover the northwestern part of the rancho Punto del Año Nuevo, previously surveyed, and which has been patented.

U. S. surveyor general's office, San Francisco, California, November 14th, 1860.

J. W. MANDEVILLE,
U. S. Sur'r Gen'l Cal'o.

61 *Monition.*

UNITED STATES OF AMERICA,
Northern District of California, ss:

[SEAL.] The President of the United States of America to the marshal of the United States for the northern district of California, greeting:

Whereas objection has been made to the official survey and location of the land finally confirmed, in case No. 271, to Manuel Rodriguez, known as "Butano," and situated in the county of Santa Cruz, in said district:

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to give due notice to all parties having, or claiming to have, an interest in such survey and location, that they be and appear before the district court of the United States for said district, setting in land cases, on or before Wednesday, the 26th day of December, A. D. 1860, at 11 o'clock a. m., (if that day shall be a day of jurisdiction, and if not, on or before the next Wednesday thereafter,) then and there to intervene for the protection of such interest, or their defaults will be taken.

And what you shall have done under this writ do you then and there make due return thereon.

62 Witness the Hon. Ogden Hoffman, judge of said court, at San Francisco, in said district, this 22d day of November, A. D. 1860.

W. H. CHEVERS, *Clerk.*

The within monition was received by me on Thursday, the 22d day of November, 1860, and in obedience thereto I have given due notice,

as therein commanded, by causing the publication of said notice for 4 consecutive Wednesdays in the San Francisco Herald, commencing on the 5th day of December, 1860, and for 4 consecutive Saturdays in the Monterey Union, a paper published nearest the land, commencing on the 1st day of December, 1860.

Dated San Francisco, November 30, 1860.

P. L. SOLOMON,
U. S. Marshal.

Endorsed: Filed January 2d, 1861.

W. H. CHEVERS, *Clerk.*

Order on return of monition.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-
63 room in the city of San Francisco, on Wednesday, the second day of January, in the year of our Lord one thousand eight hundred and sixty-one.

Present: the honorable Ogden Hoffman, district judge.

THE UNITED STATES *v.* MANUEL RODRIGUEZ. } In land cases.—District court No. 271.—Land com. No. 627.

And now at this day, the United States marshall having made return upon the monition heretofore issued in this cause, that he had given due notice, as therein commanded, on motion of J. Clarke, attorney for claimants, proclamation was made that all parties having, or claiming to have, an interest in the survey and location of the land finally confirmed in the above-entitled cause appear and intervene for the protection of such interest. The U. S. attorney for the U. S., and Jeremiah Clarke for the claimants. Mr. Crittenden appeared on behalf of Isaac Graham, no one else appearing, whereupon it is ordered that the default of all parties not appearing, as aforesaid, be, and the same is hereby, entered.

Endorsed: Filed January 2, 1861.

W. H. CHEVERS, *Clerk.*

64 *Exceptions to survey, (claimant.)*

District court of the United States for the northern district of California.

THE UNITED STATES *v.* MANUEL RODRIGUEZ. } No. 271.—"Butano."

Loren Coburn, Jeremiah Clarke, and Daniel Clarke, successors in interest to the claimant in this cause, except to the survey returned in this cause, pursuant to the order of this court made at their instance, for this: that whereas the claim in said cause was finally confirmed for one league, by a decree specifying only the western, south-

ern and eastern boundaries of the tract confirmed, the said surveyor has surveyed and returned, as if pursuant to said decree, only three thousand and twenty-five (3,025) acres. Whereas, within said boundaries, and without interfering with any prior grant, the full quantity of one league could, without difficulty, have been located and surveyed; and these exceptors insist that it was erroneous in said surveyor to limit the land surveyed in this cause to that shown by the diseño filed therein, for they say that said diseño, although showing the land asked for by the original grantee, in his petition
65 to Governor Alvarado, was not referred to in his petition to Micheltorena, and that the grant of one league by the latter was not limited to the land shown by said diseño, but embraced a league in quantity within said boundaries therein designated, and that said grant was, in terms, confirmed by the final decree of this court, which should have been followed and conformed to by said surveyor in the making of said survey.

They ask, therefore, that this court may reform said survey and plat by adding thereto, upon the north and east thereof, fourteen hundred and thirteen acres, making the whole amount one league, as specified in said grant and decree.

J. CLARKE,
Att'y for claimants and exceptors.

Endorsed: Filed January 2d, 1861.
W. H. CHEVERS, *Clerk.*

Intervention of Isaac Graham.

District court of the United States for the northern district of California.

THE UNITED STATES *v.* MANUEL RODRIGUEZ. } D. C. No. 271.—L. C. No. 627.—"Butano."

66 A. P. Crittenden, being sworn, says, upon his information and belief, that Isaac Graham, of the county of Santa Cruz, is the owner of a tract of land called "Punta de Año Nuevo," which was finally confirmed to Manuel Castro and others, the heirs of Simeon Castro, dec'd, and a patent therefore issued to them by the United States; that said Graham holds the same under deeds of conveyance from said heirs of Simeon Castro, dec'd, and that, according to said patent and the survey therein recited, the said tract, called "Punta de Año Nuevo," not only adjoins, but, as deponent is informed and believes, includes the land called "Butano," as the same has been surveyed by authority of the surveyor general of the United States, according to the survey thereof returned to this court.

And deponent says that he is one of the attorneys of said Graham, and that he is informed and believes that said Graham is absent from the city and county of San Francisco.

A. P. CRITTENDEN.

Subscribed and sworn to before me this 26th day of December, 1860.

[SEAL.] W. W. WIGGINS,
Notary Public.

Endorsed: Filed January 2, 1861.

W. H. CHEVERS, *Clerk.*

67 *Exceptions to survey.—I. Graham.*

In the dist. court of the United States for the northern district of California.

UNITED STATES
v.
MANUEL RODRIGUES. } D. C. No. 292.—L. C. No. 627.

Isaac Graham, an intervener in the above cause, comes, by Crockett & Crittenden, his attorneys, and excepts to the survey made by the United States surveyor general for California, of the lands mentioned in the decree of confirmation in the said cause, and avers that the said survey, a plat whereof has been returned into this court, is erroneous and ought to be set aside. And, for cause of exception, he alleges and sets forth the following, to wit:

1st. That the said survey does not conform either to the original grant or to the decree of confirmation, and embraces lands which were not embraced in the said grant or confirmation, and which belong to the said Graham, under and by virtue of mesne conveyances from the heirs at law of Simeon Castro, deceased, to whom the said lands have been duly confirmed and patented.

2d. That the said survey is erroneous in this, to wit: that it locates and embraces a large body of land south and west of the
68 Butano creek, whereas it ought properly to have embraced lands north and east of the said creek; the lands south and west of said creek, which are embraced in said survey, being embraced in an older grant, duly made to Simeon Castro by the governor of California, and which have been duly confirmed and patented to the heirs of said Castro, from whom the said Graham has derived title to the said lands by mesne conveyances, duly executed and recorded.

3d. That the said survey is erroneous in this, to wit: that the southern line thereof should run from east to west, in a right line, whereas the said line runs from a northwesterly in a southeasterly direction, and not in a right line.

4th. That said survey embraces more land than is warranted, either by the original grant or the decree of confirmation.

5th. That the said survey is, in other respects, erroneous and variant from the original grant, diseño, and decree of confirmation, and embraces a large body of land which ought not to have been embraced therein, and which belongs to said Graham, under and by virtue of conveyances from the heirs of Simeon Castro, deceased, to whom the same have been confirmed and patented.

69 Wherefore he prays that said survey be set aside and reformed.

CROCKETT & CRITTENDEN,
Att'ys for Isaac Graham.

Endorsed: Filed January 12, 1861.

W. H. CHEVERS, *Clerk.*

Stipulation admitting certain evidence, &c.

(This stipulation is amended by stipulation filed Sep. 30, 1862.)

District court of the United States for the northern district of California.

THE UNITED STATES *vs.* MANUEL RODRIGUES. } D. C. No. 271.—L. C. No. 627.—"Butano."

It is stipulated and agreed that the following records and papers shall be considered as given in evidence on the trial of this case on the question of survey, and that in the event of an appeal to the Supreme Court of the United States from the decision of this court, the said records and papers, together with this stipulation, shall be copied into and form part of the record of the case on appeal:

1st. The record in this court in the case of the United States *v.* Juan Gonzales, No. 104, D. C., No. 336, L. C.

And it is admitted that there is more than three-quarters of
70 a league of land included in the boundaries mentioned in the grant to said Gonzales, which grant appears in said record.

2d. The record in this court in the case of The United States *v.* Maria Antonio Pico *et als.*, No. 70, D. C., No. 315, L. C.

3d. The patent issued by the United States to the said Maria Antonio Pico, the widow of Simeon Castro, dec'd, and Juan Castro and others, the children and heirs of said Simeon Castro, which patent bears date the 3d day of December, A. D. 1857.

And it is admitted by the claimant, Rodrigues, that the said patent and survey therein set forth, with the exception of a small piece of land to the northeast of the upper part of Butano creek, embrace lands all of which lie within the boundaries specified in the decree of confirmation in said case of the United States *v.* Maria Antonio Pico *et als*, and include the whole of the land embraced in the survey of the tract called "Butano," confirmed to Manuel Rodriguez.

4th. The record in this court in the case of the United States *vs.* Sabastian Rodriguez, No. 229, D C., No. 192, L. C.

And it is stipulated that the deposition of José Jesus Pico,
71 which appears in said record, and all other depositions appearing in any of the records herein referred to, shall be considered as taken in this case, and that all papers appearing in said records shall be considered as properly in evidence in this case.

And it is admitted that all the title and interest which the said Maria Antonio Pico *et als.*, the widow and heirs of Simeon Castro,

dec'd, took under the grant to said Castro, and the confirmation and patent to themselves is vested in Isaac Graham.

5th. The original paper, marked "Exhibit A. P. C," hereto annexed, and of which a translation may be hereafter filed. Its execution is admitted, and it is admitted that the Manuel Rodriguez, whose name is signed to the certificate appearing therein, is the same person who is the claimant in this case.

CROCKETT & CRITTENDEN,
Att'ys for Isaac Graham.
J. CLARKE,
Att'y for Claim't.

SAN FRANCISCO, *February* 6, 1861.

Endorsed: Filed February 6, 1861.
W. H. CHEVERS, *Clerk.*

72 *Exhibit A. P. C.*

Sello cuarto, dos reales.

Habilitado provisionalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

MICHELTORENA.
PABLO DE LA GUERRA.

[SELLO.] Certificamos: que es publico y notorio en la villa de Branciforte que el terreno nombrado Punta de Año Nuevo pertenece á los herederos del finado Simeon Castro hace año y medio poco mas ò menos; que Eugenio Soto fué á fundarlo por cuenta y consentimiento de Dn. Manuel Castro, quien tambien hallevado y tiene en él ganado y caballada de su fierro; y que dicho terreno se ha respetado por aquella comunidad como propiedad legal de los espresados herederos; y para que conste damos esta á su instancia en Monterey á 25 de Marzo de 1844.

(Two names left out.) George Chapell, Apolinario Lorengana, Robert King, Bentura Hernandez, Galindo Finney, José Bolcoff.

Manuel Rodrigues, alcalde primero de la jurisdiccion de Bransiforte, certifico: que lo que contiene el documento anterior es conforme la notoriedad publica del vecindario de dicha villa pues es verdad y me consta que el terreno que se menciona es propio de los herederos del finado Simeon Castro, y que esta ocupado y no valdio hace mas de año con fincas rusticas ganado y caballada. Y para los usos que convengan al interesado doy este á su pedimento en Monterey á 21 de Marzo de 1844.

MAN'L RODRIGUEZ.

Endorsed: Filed February 6, 1861.
W. H. CHEVERS, *Clerk.*

73 *Opinion.*

THE UNITED STATES
v.
MANUEL RODRIGUES. } No. 271.—March 2d, 1861.

This case comes up on objections to the survey filed by the claimant.

By the decree of this court there was confirmed to the claimant the land called "Butano," bordering on the rancho of the heirs of Simeon Castro, the Comeria and the sea, of the extent of one square league. The principal point in controversy is as to the location of the boundary of the rancho of the heirs of Simeon Castro.

To ascertain that boundary resort must be had to the espediente.

In Castro's petition the land is described as the tract called "Punta del Año Nuevo," from the boundaries of "Ilano Buelna to those of Juan Gonzales, which will be four leagues, a little more or less, and from the sierra to the sea-shore, which will be one league, as shown on the accompanying sketch."

On the diseño attached to the original petition of Romana Sanchez for the land confirmed to the claimant, the Butano creek is represented as the northern boundary of the land solicited and as the southern boundary of the Gonzales tract, and the same creek is delineated on Gonzales diseño and mentioned in his grant as forming his
74 southern boundary.

If, then, the description in the Castro grant be construed as referring to the southern boundary of Gonzales, as shown by the grant of the latter, no location whatever can be made of the league granted to the claimant—for his northern boundary is the Butano creek, and his southern boundary the land of Castro—but the northern boundary of Castro is the same Butano creek; hence the ranchos of Gonzales and Castro adjoin, and the claimant can take nothing.

But it is contended that the northern boundary of the Punta del Año Nuevo rancho, which by the terms of Rodrigues's grant constitutes the southern boundary of the land of the latter, is not the Arroyo del Butano, but another creek called Arroyo de los Frijoles or Bean Hollow.

We have already seen that the Año Nuevo rancho is declared in the grant to be bounded by the rancho of Gonzales on the north, and that the southern boundary of this latter, as shown by his grant, is the Arroyo del Butano, as appears from the Gonzales diseño and grant, and even from the diseño in the case at bar.

It is urged, however, that when the governor in the Año
75 Nuevo grant referred to the boundary of Gonzales as constituting the northern limit of the land he was then granting to Simeon Castro, he intended, not the Gonzales boundary, as mentioned in the grant of the latter, but that boundary as delineated on the diseño of the Punta del Año Nuevo rancho.

On referring to this diseño, we find a tract delineated lying between the ocean and the sierra, and chiefly contained between two arroyos represented as running from the mountains to the sea. At a short distance to the north and south of these brooks, respectively,

lines are drawn, of which the southern is marked "Lindero de Hilario Buelna," and the northern "Lindero de José Gonzales." If the brook, near which this boundary of Gonzales is drawn, had any name inscribed upon it, the position of this line, and consequently the northern limit of the Punta del Año Nuevo rancho, as indicated by the diseño, could be ascertained beyond controversy; but it is merely marked "Arroyo"

But the delineation of the line of the coast affords very important indications as to the particular brook intended.

The rancho of Punto del Año Nuevo was made up of two ranchos, one of which had been granted to Bernal, who surrendered his rights to Castro, by whom a final grant for both, under one name,
76 was obtained. These two ranchos were the Punto del Año Nuevo proper and the rancho called De la Ballena.

On the diseño under consideration those two points from which the ranchos derived their names are laid down, and by comparing the diseño with the official map of the coast attached to the patent, obtained by the successors in interest of Castro, they are readily identified. The Punta del Año Nuevo, New Year's Point, (being its former name translated,) and the Punta de Ballena as another point, near which is a rock, marked "Stone-house Rock."

As the identity of Punta del Año Nuevo with New Year's Point, there is no question, and it is equally clear that the Punta de la Ballena must be the point near Stone-house Rock, for there is none other on the coast which could have been intended.

It is stated by one of the witnesses in the Sebastian Rodriguez's case, the record of which has been made evidence in this, that the Punta de la Ballena is about six miles north of the Punta del Año Nuevo, and this is precisely the distance, as shown by the map, between the New Year's Point and the Stone-house Rock Point.
77 If, then, this latter point be the Punta de la Ballena of the diseño, the arroyo drawn on that diseño a short distance to the north of it cannot be the Arroyo del Butano; for the arroyo of the diseño is represented as falling into the ocean at a distance from the Punta de la Ballena, of about one-third the whole length of the rancho; whereas the Arroyo del Butano falls into the sea at least as far north of the Punta de la Ballena as the Punta del Año Nuevo is south of it. In other words, if the arroyo of the diseño be taken to be the Arroyo del Butano, the Punta de la Ballena will be at about the middle of the tract instead of being at about one-third of the whole length from north to south.

But to the north of the Punta de la Ballena there is an arroyo called Arroyo de los Frijoles, which in all respects corresponds with the arroyo of the diseño. It is the requisite distance north of the point; and if it be assumed to be the arroyo of the diseño, it makes the rancho about 4 leagues in length, corresponding, in that respect, with the description in the petition of the tract solicited.

It is also urged that the diseño attached to the original petition of Bernal, who obtained, as has been stated, a grant for the Rincon de la Ballena, and whose rights were surrendered to Pico, and by him to Castro, by which latter a grant for that and the adjoining

78 rancho was obtained, show what was intended to be the northern boundary of the original rancho of Rincon de la Ballena, and, consequently, what must have been intended to be the northern boundary of the consolidated rancho of Punta del Año Nuevo.

In the diseño attached to the original petition of Bernal, and which is in the record of the Sebastian Rodrigues case, which was rejected by the board, the rincon, or corner, is represented as comprised within the Arroyo de la Laguna and the sea; this arroyo is evidently the same as the Arroyo de las Frijoles, which, as appears from the official map, terminates at its mouth in a laguna of some size.

On the Bernal diseño it is represented as forming the northern boundary of the Rincon de la Ballena, and on the north of it the land is inscribed as that of the citizen José Antonio Galindo, the same person who obtained for himself and his mother the grant in the case at bar.

I think it clear, therefore, that the Rincon de la Ballena, petitioned for by Bernal, and delineated on his diseño, was intended to be bounded towards the north by the Arroyo de la Laguna, or de los Frijoles, which was regarded as forming the southern boundary of the Galindo rancho.

79 That these were the limits of the Galindo tract is also apparent from the diseño in the case; for, by comparing the Bernal diseño with that in the Galindo espediente, it will be seen that the two tracts are represented as adjoining each other—the Galindo tract being bounded on the south by the Arroyo de la Laguna or de los Frijoles, and the Bernal tract being bounded on the north by the same stream.

An additional argument in favor of the location, contended for by the claimants, is found in the fact that if the Gonzales boundary, mentioned in the Castro grant, be the boundary described in the Gonzales grant, to wit, the Butano creek, we must suppose the government to have committed the absurdity, not to say injustice, of making a grant to Galindo under which he could take no land whatever, for his northern boundary, as shown by his diseño, is the Butano creek, and his southern boundary the rancho of Castro. But if the same creek is the northern boundary of Castro, there will be no land between the two ranchos of Gonzales and Castro to be appropriated to Galindo.

That the government may sometimes have accidentally granted the same land to two persons is not impossible, but such an acci-

80 dent is highly improbable, and the clearest evidence ought to be required before we can be justified in considering it to have occurred. But in this case where the pretensions of Castro were founded on a former grant to another person, whose rights he had acquired where the grant and diseño of his predecessor in interest showed that the land asked for did not include the possession of Galindo held by him under a provisional concession made long previous to the first application for the Rincon de la Ballena, it is in the highest degree improbable that the government would have granted to Castro the land held by another under so acient and equitable a title.

The question, then, is, did the government, when it declared that the land was bounded by the rancho of Gonzales, intend the boundary expressed in the grant of Gonzales, or that delineated on Castro's own diseño? I think it very clear that the latter was intended, and for the following reasons:

The land is stated in the grant to be four square leagues, as shown in the respective diseño. By that diseño, as we have already seen, the boundary of Gonzales is placed a very short distance to the north of a creek, which is obviously not the Arroyo del Butano, but the Arroyo de la Laguna or de los Frijoles.

81 The tract is described in the petition as four leagues in length and one in breadth, as shown on the sketch. The officer, to whom it was referred for information, reports that the "boundaries of the tract are the same as are expressed in the petition and respective diseño, the demarcation of which does not comprise the land of any other person"—a report which could not have been made if the land had been supposed to embrace the lands already provisionally granted to Galindo, and occupied by him long before the petition of Castro, or even that of Bernal, to whose rights he succeeded.

The governor, relying on this report, makes the grant, and designates the rancho of Gonzales as the northern boundary. But the tract he meant to grant must have been that delineated on the diseño, and comprised within the boundaries there laid down or the lines *thereon marked*, as the boundaries of Gonzales and Buelna, notwithstanding that they may not have been the actual boundaries of those persons when their own grants are consulted.

Again: the land asked for and granted is four leagues in length by one in breadth. This tract the alcalde reported to be vacant, and this alone the governor intended to grant. But if the Butano creek be taken as a boundary, the length of the tract will be five

82 leagues, while the quantity can be restricted to the four leagues confirmed, only be making the width of a considerable portion much less than the width expressed in the petition and indicated on the diseño.

And, finally, it is in a high degree improbable that Castro intended to solicit, as it is almost impossible that the governor would have consented to grant any extension towards the north beyond the boundary of the former rancho of Rincon de Ballena, the rights to which Castro represented, when by so doing a person would be deprived of land which he had long occupied and enjoyed under a provisional title, and his rights to which had been recognized and respected when the Ricon de Ballena had originally been given to Bernal.

I therefore think that the land of the present claimant has been correctly located as bounded by the Arroyo de los Frijoles on the south, and that the objections of the representatives of Castro to that survey must be overruled.

It is to be regretted that a patent has already been issued to the latter, founded on what I must consider an erroneous survey, but that survey was never submitted to this court, and the rights of the present claimant must now be maintained, notwithstanding that the U. S.

83 have erroneously patented his land to another. When both shall have obtained patents, they will be in a condition to finally settle the controversy before the ordinary tribunals.

The claimant also contends that there should be surveyed to him one league, notwithstanding that to obtain that quantity he may be compelled to go beyond the Butano creek. But we have seen that that creek is the southern boundary of Gonzales, who has the oldest grant, and it is clearly designated in the diseño of the claimant as the northern boundary of the latter. Whether he can, in any event, cross that creek to obtain the required quantity, or whether, following the indications of the diseño, the boundary between the claimant and Gonzales is to be taken to be a line drawn from the mouth of the creek at right angles to the line of the coast, and not following the creek which enters the ocean at an acute angle, it would be clearly improper now to decide. For the Gonzales claim, though confirmed by the Supreme Court, has not been surveyed, and the boundary between his rancho and that of the claimant ought not to be fixed until the rights of both grantees can be considered.

An order in conformity with this opinion must be entered.

Endorsed: Filed March 2d, 1861.

W. H. CHEVERS, *Clerk.*

84 *Order rejecting survey, &c.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Thursday, the 10th day of October, in the year of our Lord one thousand eight hundred and sixty-one—

Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES } *v.* } No. 271.
MANUEL RODRIGUEZ. }

This cause coming on to be heard upon the exceptions to the survey heretofore made and returned therein, and counsel for all the parties herein having been heard, it is now ordered, adjudged, and decreed, that the survey aforesaid be, and the same is hereby, rejected and set aside as erroneous; and it is further ordered, adjudged, and decreed, that the surveyor general do make a new survey of the tract confirmed herein, locating the same, at the election of the claimants, within the boundaries mentioned in the grant herein confirmed, viz: On the east, the mountains; on the south, the tract called Punta de Año Nuevo, granted to Simeon Castro; and on the west, by the ocean; and that he make return of said survey to this court.

85 OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed: Filed October 10, 1861.

W. H. CHEVERS, *Clerk.*

(Here follows map marked page 85.)

In the United States district court in and for the northern district of California, county of Santa Cruz.

THE UNITED STATES
v.
MANUEL RODRIGUES. } No. 271.—"Butano."

Thomas W. Moore, Braddock Weeks, B. V. Weeks, Samuel H. Besse, and A. Moore, respectfully represent to this court that, though divers mesne conveyances from the original grantee of the rancho called San Antonio or El Pescadero, they are joint owners with others of the said rancho, and ready to produce their title-deeds thereto.

And Alexander Bailey, James Brannan, and John McHugh represent that they hold mortgages against divers parties, secured upon portions of the said rancho El Pescadero, claiming title thereto from the original grantee of said rancho.

That the said rancho has been finally confirmed in the name of Juan Gonzales, the grantee thereof.

That a survey of the said rancho has been made by the United States surveyor general for California, and returned to this
87 court, and the same was confirmed by this court on the 28th day of September, A. D. 1861.

That the claimants of the said rancho have taken an appeal from the order and decree of this court affirming said survey to the Supreme Court of the United States, and that the same is now pending and undetermined.

That the said rancho, El Pescadero, is bounded on the northerly side thereof by the rancho called San Gregorio; on the easterly by the mountains; on the southerly by the Arroyo del Butano, and on the westerly by the ocean, as is shown by the record and proofs in that case on file in this court, to which your petitioners beg leave to refer.

Your petitioners further show that there has been confirmed by this court the rancho called Butano, which, in fact, lies southerly of the aforesaid Arroyo del Butano, and that it does not at any place cross to the northward of said Arroyo del Butano.

That the espediente in this last-mentioned case clearly shows that the said Butano creek was the boundary line in its entire length between the rancho "El Pescadero" and the rancho "Butano."

Your petitioners further show that a survey was made of the said Butano rancho by the U. S. surveyor gen'l, which correctly
88 located the said rancho. That said survey was returned to this court under the order of the court. That said survey was set aside, and another survey ordered, which has been made and returned to this court by the surveyor general, and filed herein on the second day of December, 1861.

That this last-mentioned survey is erroneous in this: that it locates said Butano rancho entirely to the northward of the said Arroyo del Butano, contrary to the grant and proofs and decree in the case,

whereas it should be confined in its location to the southward of the said Arroyo del Butano.

Your petitioners further show that they did not intervene in the matter of the survey of the said rancho Butano prior to the order of this court for a resurvey thereof, for the reason that the said survey and plat first returned to this court by the surveyor general did not embrace any of the lands of the rancho El Pescadero, so claimed by them as aforesaid; and they were advised that, under these circumstances, it was unnecessary for them to intervene.

Your petitioners further show that the second survey as made by the surveyor gen'l embraces a large body of land which has been in the possession of some of your petitioners for many years last past; that they have occupied the same, claiming title thereto,
89 and deraigning their title from the said Juan José Gonzales.

That they have made permanent and valuable improvements thereon, and that, during all this period neither the present claimants nor their immediate grantors have ever, until the past four weeks, made any pretensions of ownership to any of the lands northerly of the said Arroyo del Butano; but, on the contrary, your petitioners show that the present claimants of said rancho Butano are now in the actual possession of the lands covered by the first survey of their said rancho returned to this court, and that they have the same enclosed by a good and substantial fence.

Therefore, your petitioners pray that they may be permitted to intervene in the matter of the survey of the said rancho Butano, and that this petition may be filed as their intervention herein, and that they may be allowed to file their exceptions to the said survey of the said rancho Butano.

PATTERSON & STORR,
Att'ys for Petitioners.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

W. W. Storr, being sworn, says that he has read the foregoing petition, and that the same is true according to his information and belief.

W. W. STORR.

90 Sworn to before me this 3d day of Dec., 1861.

[SEAL.] BLAIR LAURIE,
Notary Public.

Endorsed: Filed December 3d, 1861.
W. H. CHEVERS, *Clerk.*

Order to file intervention and exceptions of T. W. Moore et al.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Tuesday, the third day of December, in the year of our Lord one thousand eight hundred and sixty-one—

Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES
v.
MANUEL RODRIGUEZ. } No. 271.

And now, at this day, on the motion of Storr & Patterson, it is ordered by the court that they have leave to file the petition of intervention and exceptions to survey of T. W. Moore *et al.*

Endorsed: Filed Dec. 3, 1861.

W. H. CHEVERS, *Clerk.*

91 *Exceptions to survey* (*T. W. Moore et al.*)

The U. S. district court, northern district.

THE UNITED STATES
v.
MANUEL RODRIGUEZ. } No. 271.

Thomas W. Moore, Braddock Weeks, B. V. Weeks, Samuel H. Besse, and A. Moore, as owners, and Alexander Bailey, James Brennan, and John McHugh, as incumbrancers, of and upon the rancho San Antonio, or El Pescadero, except to the survey of the rancho "Butano," filed in this court, by the United States surveyor general, on the 2d day of December, A. D. 1861, and, as ground of exception, state that the location of the said rancho Butano is not in accordance with the final decree of this court relating thereto; that the said location is not in accordance with the grant in this case; that the said location is not in accordance with the diseño in this case; that the said location is wholly to the northward of the Arroyo Butano, whereas it should be wholly to the southward thereof; that said location is contrary to the espediente and proofs in said cause.

PATTERSON & STORR,
Attorneys for Exceptors.

92 Endorsed: Filed December 3, 1861.

W. H. CHEVERS, *Clerk.*

Exceptions of U. States to survey.

In the United States district court for the northern district of California.

THE UNITED STATES
v.
MANUEL RODRIGUEZ. } No. 271.

The United States objects to the survey of the rancho Butano, a plat of which was filed in this court by the surveyor gen'l on the 2d day of December, A. D. 1861, and, as grounds of objection, says:

First. That the said survey located the said rancho wholly to the northward of the creek or arroyo called Butano, whereas, in point of fact, it should be located wholly to the southward thereof.

Second. That said location is wholly upon the lands of the United States.

Third. That said location is not in accordance with the grant, nor the diseño, nor the decree of confirmation in this case.

Fourth. That said survey does not embrace any part of the lands described in the grant, diseño, or decree of confirmation in this case.

WM. H. SHARP, *U. S. Att'y.*

93 Endorsed: Filed Dec. 3, 1861.

W. H. CHEVERS, *Clerk.*

Report of U. S. sur. gen'l on survey.

THE UNITED STATES *v.* MANUEL RODRIGUEZ. } D. C. 271.—L. C. 627.

To the Hon. Ogden Hoffman, U. S. dist. judge, northern district, California:

SIR: A decree for resurvey in the above case has been filed with me, declaring the former survey erroneous, and ordering "that the surveyor general do make a new survey herein, locating the same, at the election of the claimant, within the boundaries mentioned in the grant herein confirmed, viz: "On the east, the mountains; on the south, the tract called 'Punta del Año Nuevo,' granted to Simeon Castro; and on the west, the ocean, and that he make return of the survey to court."

My view of the decree for resurvey is, that the court intended the eastern boundary of the former survey should be run as far east as the sierra, and should there be found more than one league within those boundaries; that then the claimant should elect as to the quantity of one league of land.

94 This view is based on an examination of all the original papers in the case, as well as those of Gonzales on the north and Castro on the south.

The attorney for claimant differs materially with me, and contends that the north line of the Punta del Año Nuevo, as surveyed, is his southern boundary, and any area at his election, between the ocean and the sierra, would answer the calls of this decree. As no northern boundary is mentioned, I am unable to determine whether his views are correct or not.

As an officer of your court, called upon to perform a survey under a general decree, and report thereon by approval or disapproval, I cannot fail to appreciate the responsibility of seeing that the survey is made in strict accordance with the plain intent thereof, both as to locality and area.

In this instance, in order to fulfill the terms of the decree, I am referred to the grant, which grant, with the accompanying records, found in the archives, show the precise purpose of the granting power, by fixing and limiting the location of the specific tract designed to be conceded, and separated from the national domain.

I have, therefore, returned a plat carefully compiled from the records of this office, in order that the whole may be properly
95 placed before you, and the difference between the views entertained by attorney for claimant and myself decided and settled by some further order from you.

Very respectfully, your ob't s'v't,

E. F. BEALE,
U. S. Sur. Gen'l.

Endorsed: Filed Dec. 9, 1861.

W. H. CHEVERS, *Clerk.*

Opinion.

U. S.
v.
MANUEL RODRIGUEZ. } No. 271.—Exceptions to survey.—March 15, 1862.

When the first official survey of the land confirmed in this case was before the court, it was excepted to on the part of the representatives of Simeon Castro, the grantee of the adjoining rancho, on the south, because the southern boundary of the survey was fixed at the Arroyo de Frijoles, instead of the Arroyo Butano.

It appeared that the rancho of Gonzales, lying immediately north of the rancho of the claimants, was clearly bounded on the south by the Butano. If, then, that same creek should be taken to be the northern boundary of the Castro rancho, the effect would be to leave no land whatever between the two ranchos to satisfy the grant
96 to the claimants of the Rodriguez or Butano rancho.

After fully examining the diseños and grants in the three cases, it was decided by the court that the northern boundary of the Castro grant, and consequently the southern boundary of the Rodriguez, was the Arroyo de Frijoles. It was also considered that the Arroyo del Butano was the southern boundary of the Gonzales tract; and as the claim of the latter had been confirmed to a tract one league in length by ¾ of a league in breadth, he was, when the survey was submitted for approval, permitted to locate his land running northward from the Butano creek along the shores of the sea, and eastward, so far as was necessary to complete the quantity granted.

It resulted that, between his northern and southern boundaries and to the eastward of the line drawn for quantity, a strip of land was left which, though within the exterior boundaries of the tract, was not included in the survey.

It is this strip of land which the claimants in the present case propose to appropriate in satisfaction of the grant for one league. If this location be permitted, no part of the land delineated on the diseñ will be included; for the map evidently embraces a tract
97 bounded by the Butano creek on the north, and the Frijoles on the south, while the strip of land referred to lies wholly to the north of the Butano creek, and behind the tract about one league long and ¾ of a league wide, surveyed to Gonzales.

It is contended that this location is in entire conformity with the language of the grant and decree; the land confirmed to the claimants being "one square league, bounded by the rancho De Punta del Año Nuevo," (Castro's rancho,) "the sierra and the sea."

But it will at once be perceived that under no construction of these calls can the location contended for be permitted; for, having ascertained, as was done in the previous decision, and at the instance of the claimants, the line of the Punta del Año Nuevo grant, it only remained to locate one league of land bounded on the south by that line, on the east by the sierra, and on the west by the sea; the northern boundary would thus be left to be determined by quantity, provided (and the determination of this point was expressly reserved) the survey could be permitted to cross the Butano creek. It is evident that the southern line of the rancho being determined, the calls for the sierra and sea became definite and restricted, and must be deemed to refer, not to any portion of the sierra or the shores of the ocean
98 to be arbitrarily selected, but to such portions of them, respectively, as would form an eastern and western boundary to a rancho, the southern boundary of which was the line of the Punta del Año Nuevo rancho.

In the brief originally submitted by the counsel for the claimants in the case at bar, it was insisted that the boundaries of the tract were on the south, the Arroyo de los Frijoles (claimed to be the line of the Año Nuevo rancho;) on the east, the mountain side; on the west, the ocean; and on the north, an east and west line drawn one league south of the rancho of San Gregorio; that space being necessary to allow the location of the Gonzales tract, one league long by ½ in breadth, between the San Gregorio and the rancho of the claimants.

By the claimant's own admission, therefore, the southern boundary of his land must be the Arroyo de los Frijoles or the line of the Castro rancho, and the eastern and western boundaries must be portions of the sierra and of the sea-shore lying contiguous to his southern boundary.

It remains to be determined whether he can be permitted to cross the Butano creek for quantity.

If the diseño be accepted as a guide, it is apparent that the
99 Butano creek was fixed as the northern boundary of the tract solicited. It is equally clear that the same creek was designated as the southern boundary of the Gonzales rancho, which was an older grant.

It is said, however, that the grant was not made with reference to the diseño, and that the claimants ought not to be confined to the tract therein delineated.

The land was originally solicited by Romana Sanchez. In the petition it is described "as exhibited on the *accompanying diseño*, and as one league in length and ½ a league in breadth."

On the 29th September, 1837, this petition was referred to the administrator of the ex-mission of Santa Cruz for his report. On the 11th October, 1837, Juan Gonzales reports that the land is vacant, and that it may be granted. On the 19th February, 1838, the governor

grants to the interested party one square league "in the said locality provisionally, while the necessary proceedings are going on."

After receiving a further report from the prefect of the 1st district the governor, on the 9th September, 1838, makes a more formal grant of the land. In this it is recited that "whereas Romana Sanchez has solicited the land known by the name of Butano, *as is shown*
100 *in the espediente*, I have concluded to grant her the mentioned location in extent one square league, said concession being understood to be provisional and subject to the approbation or disapprobation of the excellent deputation."

On the 8th November, 1844, José Antonio Galindo, the son of Romano Sanchez, presented a petition to Governor Micheltorena, in which after setting forth that since 1838 they had been possessed of a location known by the name of Butano, under a provisional document issued by his excellency's predecessor, he solicits a ratification of the respective title, in order that he might obtain judicial possession, &c.

This petition having been referred to Jimeno, the latter reports that, in view of the favorable reports appearing in the espediente, there is no obstacle to granting the land having for boundaries precisely the rancho of the heirs of the dec'd, Simeon Castro. On the 13th November, 1844, the governor makes his decree of concession, declaring Doña Romana Sanchez owner of the location called "Butano," bordering on the rancho of the heirs of Don Simeon Castro, the sierra, and the sea. On the 14th November, of the same year, the formal title was issued. In this it is recited that, "whereas
101 Doña Romana Sanchez has solicited the ratification of the provisional title given to her from the year 1838 for the tract of land granted her, called Butano, bordering on the rancho of the heirs of the deceased, Simeon Castro, the sierra, and the sea, I have concluded to grant her the mentioned land, &c."

The 3d condition declares the land granted to be one square league in extent.

It is plain from these proceedings, and from the very language of the title, that instrument was intended merely as a ratification of the provisional concession of 1838, nor is there any reason to suppose that any alteration of the boundaries of the tract, provisionally conceded in 1838, was intended, except that it was to be limited on the south by the rancho of the heirs of the deceased, Simeon Castro.

To ascertain, therefore, what was the land, the title to which was ratified, or made absolute by the grant of 1844, we must inquire what land was provisionally conceded in 1838.

The provisional concession describes the land as "known by the name of Butano, as is shown in the espediente."

As the petition contained no description of the boundaries of the tract solicited, and the reports or informes make no mention of them, the only manner in which the espediente could have shown the tract conceded was by the diseño which accompanied it and formed
102 part of the espediente. We are thus referred unavoidably to the diseño to ascertain the limits of the tract known as "Butano," which the governor conceded in 1838, and the title to which,

without changing its name or alteration of boundaries, he granted absolutely in 1838. The diseño thus becomes a part of the grant in this as in other cases.

It appears, however, that the extent of the land solicited is stated in the petition to be one league in length by ½ a league in breadth, but the provisional concession and the final grant declare the land to be one square league. It appears, therefore, that the governor granted to the petitioners a tract twice as wide as that solicited, and in view of this augmentation he may have adopted the sierra as the eastern boundary, thereby including land not embraced within the limits of the diseño. But I see no reason whatever to suppose that he intended in any manner to disturb the location of the northern boundary, which was plainly fixed as on the diseño, at the Butano creek; the same stream having been previously adopted as the southern boundary of the Gonzales rancho.

It will be noticed that all the reports declare the land to be vacant. On the strength of these favorable reports Jimeno recommends
103 that the provisional title be issued; but these reports would not have been made, especially that of Juan Gonzales, who, it is presumed, was the grantee of the rancho on the north, had it been by any one supposed that the grant of Butano would include any part of the land already granted to Gonzales himself.

It has already been observed that by the terms of the grant the sierra forms the eastern boundary. The diseño shows that the Butano creek was intended as a boundary only on the north, but, in ascending this stream from the ocean, it is found that its course is, for a considerable distance, about SE.—that is, it flows in a NW. direction; but on approaching the sierra it bends to the south, running for nearly ½ its entire length near the base of the sierra, and nearly parallel with it and with the shore. This portion of the stream is not represented on the diseño, neither does the sierra, mentioned as the eastern boundary, appear upon it.

If, then, the grant be limited by the Butano the sierra will not be reached, nor will the quantity be obtained.

It has, therefore, appeared to me, on the whole, most just to adopt the Butano creek as the northern boundary, only so far as it is de-
lineated on the diseño, and to permit the survey to be ex-
104 tended eastwardly for quantity to the sierra, notwithstanding that in so doing it will cross that portion of the Butano which runs near the base of and parallel to the sierra.

I think, therefore, that the official survey should be set aside, and that a new survey should be made bounding the tract on the south by the Arroyo de los Frijoles, on the west by the sea, on the north by the Arroyo Butano, so far as the same is delineated on the diseño, and thence crossing that stream to the sierra, and on the east by the sierra, so as to include an area one square league in extent.

Endorsed: Filed March 15, 1862.

W. H. CHEVERS, *Clerk.*

Order rejecting survey.

In the United States district court, northern district of California.

THE UNITED STATES
v.
MANUEL RODRIGUEZ. } No. 271.—"Butano."

The official survey in this case having been returned into this
105 court on objections filed thereto, pursuant to the act of Congress of June 14, 1860, said survey having been disallowed by said court and a new survey directed to be made of said rancho, and said new survey having been duly returned into court by the surveyor general, exceptions were filed thereto. A new survey was directed to be made and returned to this court, and the said surveyor general being unadvised as to the true intent and meaning of the opinion and order of this court rejecting said second survey and ordering a third survey to be made, two plats were informally returned to this court for its consideration and determination as to which thereof conformed to the opinion last aforesaid. The court having examined and considered the same, counsel having been heard thereon, it is now ordered, adjudged, and decreed, that the plat so informally returned as aforesaid and marked and endorsed "Plat of the Rancho Butano, confirmed to Manuel Rodriguez, located by the U. S. surveyor general, in accordance with the opinion of the U. S. district court, dated March 20, 1862, containing one square league," and also marked and endorsed "U. S. surveyor general's office, San Francisco, California.

I certify this to be a correct plat of location made by me in ac-
106 cordance with the opinion of the U. S. district of—
March 20, 1862.

[SEAL.] E. F. BEALE,
Sur. Gen'l, Cala.,"

is the correct and proper survey of the land granted and confirmed to claimant, and that the same is in accordance with the true intent and meaning of the order and opinion of this court heretofore referred to.

It is further ordered that the surveyor general make a formal return of the said last-mentioned plat, with a certificate of his approval duly endorsed thereon, that the same may be confirmed and approved by the final decree of this court.

It is also ordered that a copy of this order be served on the surveyor general.

OGDEN HOFFMAN, *Dist. Judge.*

U. S. MARSHAL'S OFFICE,
North'n Dist. of Cala.

I have served the within order on E. F. Beale, esq., U. S. sur. gen'l, by delivering a certified copy thereof to Edw. Conway, chief clerk in his office, on this the 31st day of July, 1862.

WM. RALEE, *U. S. Marshal,*
By M. R. GRANT, *Deputy.*

Endorsed: Filed July 31, 1862.

W. H. CHEVERS, *Clerk.*

107 *Opinion, supplemental to opinion of March* 15, '62.

U. S.
v.
MANUEL RODRIGUES. } Stated term.—No. 271.—July 11, 1862.

In the opinions heretofore delivered in this case it was considered that the land granted to the claimant was bounded on the south by the Arroyo de los Frijoles, on the west by the sea, and on the east by the sierra. The northern boundary is not mentioned in the grant; but as that instrument professed to be merely a ratification of a previous provisional concession, and as the provisional concession described the tract as the land of Butano, "as shown in the espediente," the map found in the espediente, and which constituted the only means of indemnifying the land provisionally granted, was referred to for the ascertainment of the northern boundary. On this map the Arroyo del Butano is clearly laid down as the northern boundary of the tract, the lands to the north of it being inscribed as those of Gonzales.

On the diseño of Gonzales the Butano is in like manner laid down as the southern boundary, and both the decree of concession and the grant describe his land as bounded by the rancho of Buelna, the sierra, the coast, and the *Arroyo del Butano.*

108 There was much reason to contend that the grant to Gonzales, which was older than that of Rodrigues, was intended to embrace all the land within his external boundaries. The Supreme Court, however, seem to have thought that he should be restricted to ¾ of a league, to be surveyed within his out-boundaries. But there can be no doubt that the external boundaries within which his land was to be taken were the rancho of Buelna, the sierra, the sea, and the Arroyo del Butano. On the diseño of Gonzales the Butano is represented as flowing, with a slight curve, from the sierra to the sea. On the diseño of Castro the arroyo, supposed to be the Frijoles, is delineated as flowing in a general westerly direction from the sierra to the sea. It appears, however, that the course of both of these creeks is, for some distance, not far from parallel with the sierra, after which they deflect to the west and fall into the ocean in such a manner as that their lower portions might conveniently be adopted as the northern and southern boundaries of the rancho. As the grant called for the sierra as the eastern boundary, and the quantity granted and con-

109 firmed was one square league, it appeared to me reasonable to adopt the Butano only so far as it could serve as a northern boundary to the rancho, and not by following its course where it flows nearly parallel to the sierra, make it serve as the eastern boundary, also thus cutting off the grant from the sierra, called for as boundary. The diseño of Rodrigues represents neither the sierra nor the upper part of the Butano. It delineates a small and readily identified tract between the two streams and the ocean. But the petition which this diseño accompanied was for a tract ½ a league in extent. The provisional grant was for a tract of one league, and the title which rati-

fied was for one league, bounded by the sea, the sierra, and the rancho of Castro on the south.

I therefore considered that in order to meet the call for the sierra, and to obtain, if possible, the quantity, the northern line should follow the Butano so far as it was delineated on the diseño, where it was evidently intended to represent the northern boundary of the ½ league, originally solicited, and thence in a direct line to the sierra, crossing the Butano at or near the point where its course, in ascending
110 it, deflects to the south and becomes parallel with the sierra. It is now sought to obtain the quantity, not by running from this point easterly to the sierra, but by turning abruptly to the north, at nearly right angles to the course of the Butano and parallel to the sea, to include the sobrante of the Gonzales grant, left vacant by the restriction of the latter to a tract of only ¾ of a league. The land so included is clearly within the exterior boundaries of Gonzales, and the survey would include a considerable portion of the Pescadero creek, represented on the Gonzales diseño as flowing diagonally through nearly the centre of the tract. It would embrace land always claimed by Gonzales, included within his boundaries, delineated on his diseño, and to the whole of which there is much reason to suppose, as contended by his counsel, his title should have been confirmed.

That no portion of it could have been intended to be given by a subsequent grant to Rodriguez is manifest. His diseño represents no part of it, but recognizes the land on the north of the Butano as belonging to Gonzales. His grant does not call for it, for it merely describes the land as bounded by the sierra, the sea, and the
111 rancho of Castro. Gonzales reports that the land asked for by Rodriguez is vacant, which he assuredly would not have done if it had been supposed to include any part of the land previously granted to himself

I am unable to perceive on what principle, or by what authority, I can in effect decree an equivalent to Rodriguez for any deficiency in quantity within his exterior boundaries, out of a sobrante accidently found to result within the exterior boundaries of his neighbor.

With respect to the southern boundary, it is to be observed that the Arroy Frijoles was, at the urgent suggestion of the counsel for, and owner of, the Rodriguez claim, adopted as the southern boundary of the latter and the northern boundary of the Castro grant. The lands of Castro unquestionably extended from the sierra to the sea, and from the lands of Ilario Buelna on the south to an arroyo on the north. This arroyo was delineated on the diseño as running from the sierra to the sea. After much consideration, it appeared to me that the arroyo intended was the Frijoles, notwithstanding that the grant called for the lands of Gonzales as the northern boundary of Castro, and the Gonzales rancho was confessedly bounded by the Butano.
112 Had the latter stream been adopted as the boundary of Castro, the effect would have been to exclude, altogether, the grant to Rodriguez, for the grants to Gonzales and Castro would have been coterminous.

The Arroyo de los Frijoles having thus been adopted as the northern boundary of Castro, it becomes of necessity the southern boundary of

Rodriguez, as required by the grant, and suggested in the report of Jimeno, who recommends the grant with the express understanding that "it is to be without prejudice to the rights of the heirs of the deceased Simeon Castro."

It is now said that the Arroyo Frijoles, in its upper portion, is indistinctly traceable, and that it could not serve as a boundary, in its whole course, from the sierra to the sea. If this be so, it affords an argument against the adoption of that stream as the northern boundary of Castro, and it may justify the inference that the court should have taken the Butano as the boundary, thus excluding the Rodrigues grant altogether. But it hardly lies in the mouth of the present owner of both ranchos to make the objection, as the Frijoles was adopted as the dividing line between the ranchos at his suggestion, and in conformity with the arguments strenuously urged by himself.

113 Assuming the decision of the court to be correct, and any other supposition would prevent any location whatever of the Rodriguez claim, it is clear that the boundary of Castro was a stream flowing from the sierra to the sea, and as that stream is decided to be the Frijoles, the latter must be adopted throughout its whole extent.

The survey should therefore be made by adopting, as the true northern line of Castro, the Arroyo de los Frijoles from the sierra to the sea. If it should be found that the sierra cannot be reached by ascending the Frijoles, then the stream is to be ascended to the point where it approaches nearest to the sierra; the southern boundary is to be completed by drawing a straight line to the sierra; the eastern boundary is the sierra; his western boundary, the sea; his northern line will be run by following up the Butano as far as it is delineated on the diseño, which is supposed to be not far distant from the point where its course in ascending it deflects towards the south, and thence in a straight line to the sierra. If within these boundaries the quantity cannot be obtained, it will be the not very unusual case where the exterior boundaries contain less than the quantity supposed. If such should prove to be the fact, it is no doubt due to the

114 extraordinary and unaccountable circumstance that the governor, in this case, appears to have granted twice the quantity of land solicited by the petitioner and delineated on his diseño, and in respect to which alone all the informes and reports were given.

The survey herein directed will assume substantially the form of that certified by the surveyor general to be in accordance with the opinion of this court heretofore rendered.

The surveyor general having made two plats since the opinion heretofore delivered, and the same having been informally submitted for approval, though not filed in the clerk's office, and the interested parties having been informally heard in chambers, the above is intended as a supplemental opinion for the guidance of the surveyor general, to be taken as a part, and explanatory of the opinion heretofore delivered. Anything contained in the order heretofore made, supposed to be in conflict with the views herein expressed, is to be taken as vacated and annulled.

Endorsed: Filed July 11, 1863.

W. H. CHEVERS, *Clerk.*

115 (Here follows map, marked page 115.)

No.	Course.	Distance.	No.	Course.	Distance.
1	S. 38¼° E.	42.00	28	N. 62 ° W.	15.90
2	37½	89.00	29	S. 19¾	1.28
3	21¼	9.50	30	N. 26½	11.00
4	19½	6.50	31	S. 63¾	4.20
5	5½	4.00	32	N. 26	17.40
6	61¾	17.00	33	33	6.70
7	24¼	6.50	34	13	5.70
8	16½ W.	11.00	35	46½	12.50
9	64¼ E.	18.00	36	10	15.80
10	N. 5 °	108.00	37	20½ E.	6.50
11	East.	140.30	38	30½ W.	20.00
12	South.	160.00	39	24½	12.00
13	S. 82 ° W.	137.18	40	22½ E.	9.20
14	N. 43½	10.30	41	6½ W.	16.90
15	S. 63	8.50	42	7½ E.	6.50
16	N. 1	7.70	43	22¼	16.40
17	46½	10.30	44	10	9.60
18	82¼	6.10	45	21½	25.00
19	S. 59½	13.10	46	7	14.50
20	71¾	9.90	47	North.	10.00
21	40¼	13.00	48	N. 33¾° E.	8.50
22	70½	5.60	49	11½ W.	8.30
23	N. 80½	6.90	50	6 E.	15 80
24	S. 83	9.10	51	53½	1.20
25	73¾	9.30			
26	13½	4.90			
27	N. 88¾	6.20			
		869.88			270.88
					869.88
	Aggregate				1,140.76

Miles. chs links.
14 20 76

U. S. SURVEYOR GENERAL'S OFFICE,
San Francisco, California.

I certify this to be a correct plat of the survey made by Dep'y J. E. Whitcher, in accordance with the decree of the U. S. district court of March 20th, 1862.

[L. S]

E F. BEALE,
U. S. Surv'r Gen'l, Cal'a.

Affidavit of dep. surv'r.—Plat of survey.

Jeremiah E. Whitchel maketh oath that, as the deputy of the U. States surveyor general, he made the third and last of the surveys of the Butano rancho which have been made under orders of the court in this cause; that in locating the southern boundary of said rancho he followed up the Arroyo de los Frijoles to the point where said arroyo ceases to be represented as a boundary upon the diseño of the said rancho, referred to in the order of said court prescribing said survey; that from, and immediately above, said point said arroyo

deflects so much to the south that its general course is, as near as may be, parallel to the mountains and the ocean; that, in passing upward from said point, said arroyo very nearly loses the appearance and ordinary characteristics of an arroyo proper, and assumes instead the condition of a cañada, or broad, open valley, and is known by the name of Bean Hollow; that, at the distance of two miles above said point, said valley or cañada is a broad, flat meadow, nearly level, the middle of the same being actually nearer the ocean than the larger part of said valley between this and the point aforesaid; that another "hollow," (exhibited upon said diseno,) similar in its general
116 appearance, but smaller than the one last referred to, extends in an easterly direction from said arroyo, near said point, and that from said hollows said arroyo must derive most of the surface water which goes to constitute it; that from and below said point said arroyo passes through a deep cañon, between the precipitous sides of high hills, commencing with the sugar loaf mount, designated upon the diseño "Cerito," and ending near the ocean; that these whole watersheds should be most correctly described as a cañon, passing or changing into two *cañadas*, the more southern and larger of which gradually widens into a plain, and thus loses its identity.

Affiant further states that the said survey, so made by him, includes all the land delineated upon the said diseño or embraced therein, with an addition thereto, principally to the north of Butano creek, to make up the quantity of one league; that the eastern line of said survey has been carried as far easterly as the mountains will permit, (said mountains being the boundary in that direction;) that affiant located the crossing of the Butano required by said order, according to his best judgment, in conformity with the requirements of said order; that by locating it higher up the stream, or attempting to complete the measurement by a single straight line, thence to
117 the mountains, the tract would have been grossly lacking in symmetry and compactness, or wanting in quantity.

J. E. WHITCHEL.

Sworn to and subscribed before me this 16 day of June, A. D. 1862.

[SEAL.] HURRY DRESCHFELD,
Notary Public.

Endorsed: Filed July 17, 1862.

W. H. CHEVERS, *Clerk.*

Order rejecting survey, &c.

The United States district court, northern district of California.

THE UNITED STATES
v.
MANUEL RODRIGUEZ. } No. 271.

This cause, coming on to be heard upon the survey filed herein, Dec. 2d, 1861, and the exceptions thereto, it is now ordered, adjudged, and decreed, that said survey be, and the same hereby is, set aside and rejected; and it is ordered that a new survey of the tract herein

confirmed be made as follows, viz: bounding the tract on the east by the sierra; on the west by the sea; on the south by the
118 Arroyo de los Frijoles, as far as the same is delineated upon the diseño, and thence by the shortest distance to the sierra; and on the north by the Arroyo Butano, as far as the same is delineated as a boundary upon the diseño, and thence (crossing that stream) by such line or lines as will include the area of one square league.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed: Filed March 20, 1862.

W. H. CHEVERS, *Clerk.*

(Here follows map, marked original, page 118.)

118 *Boundaries.*

No.	Course.	Distance.	No.	Course.	Distance.
1	S. 38½ E.	42.00	32	S. 13½ W.	4.90
2	37½	89.00	33	N. 88¾	6.20
3	21½	9.50	34	62	15.90
4	19½	6.50	35	S. 19¾	1.28
5	5½	4.00	36	N. 26½	11.00
6	61¾	17.00	37	S. 63¾	4.20
7	24½	6.50	38	N. 26	17.40
8	16½ W.	11.00	39	38	6.70
9	64½ E.	73.00	40	13	5.70
10	East.	185.37	41	46½	12.50
11	South.	108.52	42	10	15.80
12	West.	182.55	43	20½ E.	6.50
13	N. 61½ W.	14.47	44	30½ W.	20.00
14	41½	6.40	45	24½	12.00
15	S. 87¾	14.50	46	22½ E.	9.20
16	N. 13	19.50	47	6½ W.	16.90
17	57½	6.00	48	7½ E.	6.50
18	20	20.70	49	22½	16.40
19	38½ E.	11.20	50	10	9.60
20	43½ W.	10.30	51	21½	25.00
21	S. 63	8.50	52	7	14.50
22	N. 1	7.70	53	North.	10.00
23	46½	10.30	54	N. 33¾ E.	8.50
24	82½	6.10	55	11½ W.	8.30
25	S. 59½	13.10	56	6° E.	15.80
26	71½	9.90	57	53½	1.20
27	40½	13.00			
28	70½	5.60			
29	N. 80½	6.90			
30	S. 88	9.10			
31	73¾	9.30			
		937.61			281.98
					937.51
	Aggregate				1,219.49

Miles. chs. lks.
15 19 15

NOTE.—The distances of the courses Nos. 10, 11, 12, and 13 have been computed in this office.

U. S. SURVEYOR GENERAL'S OFFICE,
San Francisco, California.

I hereby certify this to be a full, true, and correct copy of the original map, on file in this office, of the official survey of the Rancho Butano, finally confirmed to Manuel Rodriguez.

In witness whereof, I have hereunto signed my name, and caused the seal of this office to be affixed, this first day of August, 1862.

E. F. BEALE,
U. S. Sur. Gen'l, Cal.

The field-notes of the Rancho Butano, and from which this plat has been made out, have been examined and approved, and are on file in this office.

U. S. SURVEYOR GENERAL'S OFFICE,
San Francisco, California, July 31st, 1862.

E. F. BEALE,
U. S. Surv'r Gen'l, Cal'a.

Approved August 9, 1862.

OGDEN HOFFMAN, *Dist. Judge.*

119 *Decree approving survey.*

In the district court of the United States for the northern district of California.

THE UNITED STATES *v.* MANUEL RODRIGUEZ. } L. C. No. 627.—D. C. No. 271.

Be it remembered, that at a regular term of the district court of the United States for the northern district of California, held at the court-room in the city and county of San Francisco, on the eleventh day of August, A. D. 1862.

Present: Hon. Ogden Hoffman, judge.

The United States surveyor general for the State of California, having, on the second day of August, A. D. eighteen hundred and sixty-two, returned to this court a plat and survey approved and certified by him, of the "Rancho Butano," confirmed to the claimant herein, and said plat and survey conforming to the opinion of this court, and to the order of this court filed and entered herein, on the thirty-first day of July, A. D. 1862, filing and determining the boundaries and location of the said "Rancho Butano—"

It is now, on motion of the United States district attorney, and of the counsel for the intervenor, (the same being opposed by
120 J. Clarke, esq., of counsel for claimant,) ordered, adjudged, and decreed, that the plat of survey of the said Rancho Butano, filed herein, and in this court, on the second day of August instant, be, and the same is hereby, approved as a correct and true location of lands finally confirmed to the claimant, Manuel Rodriguez. And it is further ordered, adjudged, and decreed, that said plat of August 2d, 1862, marked "Approved August 9, 1862, Ogden Hoffman,

dist. judge," be hereto attached, as forming a part hereof, for a more particular description of the lands so far as aforesaid located, in accordance with the act of Congress of June 14, A. D. 1862.

OGDEN HOFFMAN,
Dist. Judge.

Endorsed: Filed August 11, 1862.

W. H. CHEVERS, *Clerk.*

121 *Order granting appeal.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Wednesday, the 20th day of August, in the year of our Lord one thousand eight hundred and sixty-two.

Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES
v.
MANUEL RODRIGUES. } D. C. 271.—L. C. 627.

This cause having come on to be heard, on objections filed to the survey and location by the surveyor gen'l of the United States for California, of the land heretofore confirmed to the claimants, pursuant to the provisions of the act of Congress approved June 14, 1860, and the said survey and location having been disapproved by the court, and a new survey ordered, which has accordingly been made, and, by the final decree of this court made and entered at the present term, to wit: on the 11th day of August, 1862, approved and adopted: Now, on motion of Mr. Jeremiah Clarke, counsel for the claimant, it is ordered by the court that, upon the said claimant filing security
122 for costs of appeal in the sum of two hundred and fifty dollars, ($250,) an appeal in his behalf from the final decision of this court be granted to the Supreme Court of the United States, and that a certified transcript of the pleadings, evidence, depositions, and proceedings in the said cause be sent to said Supreme Court without delay.

Endorsed: Filed August 20, 1862.

W. H. CHEVERS, *Clerk.*

Stipulation in regard to certain records, &c., (amending stipulation filed herein, dated Feb'y 6, 1861, on page 69.

District court of the United States for the northern district of California.

THE UNITED STATES
v.
MANUEL RODRIGUEZ. } No. 271.

It is hereby stipulated and agreed that the stipulation heretofore filed in this cause signed by Crockett and Crittenden, as attorneys for

Isaac Graham, and J. Clarke, as attorney for claimant, shall be amended as follows, viz:

In lieu of "the record in this court in the case of the United
123 States *vs.* Juan Gonzales," shall be inserted, "the grant, diseño, decree of confirmation, mandate from the United States Supreme Court, plat of survey, and final decree approving the same, contained in the record in this court in the case of the United States *vs.* Juan Gonzales."

In lieu of "the record in this court in the case of the United States *vs.* Maria Antonio Pico *et al.*," and what follows down to and including "said record shall be considered as properly in evidence in this case," shall be inserted, "the grant, diseño, final decree of confirmation, in the record in this court in the case of the United States *vs.* Maria Antonio Pico *et al.*, No. 70 D. C., No. 315 L. C., and the final survey made by the U. S. surveyor general, pursuant to said final decree."

And it is admitted that a patent was issued upon said final decree and survey, and in conformity thereto, on the 3d day of December, 1857, by the government of the U. States to the heirs of Simeon Castro, and that said survey and patent include all the lands embraced in the survey filed herein—Nov. 27, 1860—of the tract called Butano, confirmed herein to Manuel Rodriguez.

CROCKETT & CRITTENDEN,
Att'ys for Isaac Graham.
J. CLARKE,
Att'y for claimant, for himself, and L. Coburn.

124 Endorsed: Filed Sept. 30, 1862.
W. H. CHEVERS, *Clerk.*

Translation of Exhibit A. P. C.

Fourth seal, two reales.

Provisionally authorized by the maratima custom-house of the port of Monterey, in the department of the Californias for the years 1844 and 1845.

MICHELTORENA.

PABLO DE LA GUERRA.

[SEAL.] We certify that it is of public notoriety in the Villa of Branieforte, that the land named "Punta de Año Nuevo" has for one year and a half, more or less, belonged to the heirs of Simeon Castro; that Eugenio Soto went to settle (fundar) the same on account of, and with the consent of, Don Manuel Castro, who also has cattle and horses of his brand on said land; and that said land has been respected by that community as the legal property of said heirs.

In witness whereof, we give this, at their request, in Monterey, on the 25 of March, 1844.

FRAN'CO SORIA.
GEORGE CHAPELL.
APOLONIA SORENZANA. +
ROBERT KING.
BENTURA HERNANDEZ. +
JOSÉ BOLCOFF.

125 Manuel Rodrigues, first alcalde of the jurisdiction of Branieforte, certifies that what is set forth in the foregoing document is notoriously public, in the neighborhood of said villa, since it is true and manifest to me that the land mentioned is the property of heirs of the said Simeon Castro, and that the same is occupied, and has not been vacant for more than a year, but for that time has been occupied by improvements, cattle, and horses. And for the use of the interested parties, I give this, at their request, in Monterey, on the 21 of March, 1844.

MAN'L RODRIGUEZ.

Endorsed: Filed October 7, 1862.

W. H. CHEVERS, *Clerk.*

126

127 U. STATES
v.
JUAN GONZALES.

Sello segundo, doce reales.

Habilitado provicionalmente por la administracion de la aduana maritima de Monterey para los anos de mil ochocientos treinta y dos y mil ochocientos treinta y tres.

FIGUEROA.

RAFAEL GONZALES.

A.—*San Antonio title.*

José Figueroa, gen'l de brigada de los ejercitos nacionales Mejicanos, com'te gen'l, ynsp'r y gefe sup'r politico de la Alta California:

Por cuanto Juan José Gonzales, Mejicano por nacimiento ha pretendido para su beneficio personal y el de su familia el terreno conocido con el nombre de San Antonio (o) El Pescadero colindante con el rancho de Antonio Buelna, la sierra, la costa, y Arroyo del Butano; practicadas previamente los diligencias y averiguaciones consernientes segun lo dispuesto por leyes y reglamentos; usando de las facultades q'l me son conferidas, en decreto de diez y siete del corriente á nombre de la nacion Mejicana, he venido en concederle el terreno mencionado declarandole la propiedad de el por las presentes letras entendiendose dicha concesion con entera conformidad á lo dis-

puesto por las leyes á reserva de la aprovacion ó desaprovacion
128 de la ex'ma diputacion territorial y del supremo gobierno bajo las condiciones siguientes:

1a. Que se someterá á las q'e estableciere el reglamento q'l se ha de formar para la distribucion de terrenos valdios y q'l entre tanto ni el agraciado ni sus herederos podran dividir, ni enagenar el q'l se le adjudica; imponer censo, vinculo, fianza, hipoteca ni otro gravamen aunque sea por causa piadosa ni pasarlo á manos muertas.

2a. Podra cercarlo sin perjudicar las travesias, caminos y servidumbres; lo disfrutara libre y esclusivamente destinandole al uso ó cultivo q'l mas le acomode pero dentro de un año á lo mas fabricará casa y estara habitada.

3a. Cuando se le confirme la propiedad solicitará del juez respectivo q'l le de posecion juridica en virtud de este despacho por el cual se demarcaran los linderos en cuyos limites pondra á mas de las mojoneras algunos arboles frutales ó silvestres de alguna utilidad.

4a. El terreno de que se le hace donacion es de una legua
129 de longitud, por tres cuartos de leguas de latitud poco mas ó menos segun esplica el diseño q'l corre en el espediente; el juez q'l diere la posecion lo hará medir conforme á ordenanza para señalar los linderos quedando el sobrante q'l resulte á la nacion para los usos convenientes.

5a. Si contraviniere á estas condiciones perdera su derecho al terreno y sera denunciable por otro.

En consecuencia mando que sirviendole de titulo, el presente y teniendose por firme y valedero se tome razon en el libro, á q'l corresponde y se entregue al interesado.

Dado en Monterey, a veinte y cuatro de Diciembre, de mil ochocientos treinta y tres.

JOSE FIGUEROA.

AGUSTIN V. ZAMORANO, *S'rio.*

Queda tomada razon en el libro de asientos de titulos sobre adjudicacion de terrenos á fojas, veinte y una numero diez y nuebe q'l obra en el archivo de la secretaria de mi cargo.

Monterey, Diciembre veinte y cuátro de mil ochocientos treinta y tres.

ZAMORANO.

Filed in office Sept. 11th, 1852.

GEO. FISHER, *Sec'y.*

130 B.—*Translation of title.*

Stamp second, twelve reales.

Provisionally authorized by the administration of the maritime custom-house of Monterey, for the years 1832 and 1833.

FIGUEROA.

RAFAEL GONZALES.

José Figueroa, general of brigade of the national armies of Mexico, commanding general, inspector and superior political chief of Upper California:

Whereas Juan José Gonzales, a Mexican by birth, has, for his own personal benefit and that of his family, petitioned for the land known by the name of San Antonio, or El Pescadero, bounded by the rancho of Antonio Buelna, sierra, the coast, and the Arroyo of Butano, the proper measures and examinations being previously made as required by laws and regulations, using the powers which are conferred on me, in decree of the seventh of this month, in the name of the Mexican nation, I have granted him the aforesaid land, declaring to him the ownership of it by these presents, said grant being understood to be in entire conformity with the provisions of the laws, subject to the approval or disapproval of the most excellent ter-
131 ritorial deputation and of the supreme government, under the following conditions:

1st. That he will submit to those which may be established by the regulations which is to be made for the distribution of vacant lands, and in the mean time neither the grantee nor his heirs can divide or alienate that which is granted to them, subject it to any tax, entail, pledge, mortgage, or other incumbrance, even for pious purposes, nor convey it in mortmain.

2nd. He may enclose it without prejudice to the crossings, roads, and servitudes; he will enjoy it freely and exclusively, making such use or cultivation of it which as may best suit him; but within one year at furthest, he shall build a house, and it shall be inhabited.

3rd. When the ownership is confirmed to him, he will request the proper magistrate to give him juridical possession in virtue of this title, by whom the boundaries will be marked out, in which, besides the bounds, he will place some fruit or forest trees of a useful character.

132 4th. The land of which donation is made him is one league in length, by three-quarters of a league in breadth, a little more or less, as shown by the map which goes in the espediente; the magistrate who may give the possession will cause it to be measured in conformity with the ordinance, in order to mark out the boundaries, leaving the surplus which may result to the nation for its convenient uses.

5th. If he contravene these conditions, he will lose his right to the land, and it will be subject to denouncement by another person.

In consequence, I order that the present serving him for a title, and being held as firm and valid, note be made of it in the corresponding book and it be delivered to the person interested.

Given in Monterey, on the twenty-fourth of December, one thousand eight hundred and thirty-three.

(Signed) JOSÉ FIGUEROA.

(Signed) AGUSTIN V. ZAMORANO,
Secretary.

Note has been made in the book of entries of titles of grant of lands, on folio 21, number 19, which exists in the archives of the
133 secretary's office in my charge.

Monterey, December 24th, 1833.

(Signed) ZAMORANO.

Filed in office Sept. 11th, 1852.

GEO. FISHER, *Sec'y.*

[Here follows diseño, marked page 133.]

134 *Decree of confirmation.*

THE UNITED STATES *vs.* JUAN JOSÉ GONZALES. } Decree No. 104. Stated term, October 29, 1855.

Appeal from the final decision of the commissioners to ascertain and settle private land claims in California.

This cause coming on to be heard, at a stated term of this court, on appeal from the final decision of the commissioners to ascertain and settle private land claims in the State of California, under an act of Congress approved 3rd March, 1851, on a transcript of the decision and papers and proceedings on which said decision was founded; and it appearing that the said transcript has been duly filed according to law, and counsel for the respective parties having been heard: whereupon it is ordered, adjudged, and decreed by the court, that the said decision be in all things affirmed. And it is further ordered, adjudged, and decreed by the court, that the claim of the said Juan José Gonzales is a good and valid claim to the land known by the name of "San Antonio," or "Pescadero," to the extent and within the boundaries mentioned in the grant and map, the original of which former and copy of which latter are on file in the records of this case.

M. HALL McALLISTER,
Judge Cir. Court U. S. Dists. of Cal'a.

135 *Mandate Supreme Court U. S.*

UNITED STATES OF AMERICA, *ss:*

[SEAL.] *The President of the United States of America to the honorable the judge of the district court of the United States for the northern district of California, greeting:*

Whereas lately, in the district court of the United States for the northern district of California, before you, in a cause between Juan José Gonzales, appellant, and the United States, appellees, the decree of the said district court was in the following words, viz: "It is ordered, adjudged, and decreed by the court, that the said decision be in all things affirmed. And it is further ordered, adjudged, and decreed by the court, that the claim of the said Juan José Gonzales is a good and valid claim to the land known by the name of 'San Antonio,' or 'Pescadero,' to the extent and within the boundaries men-

tioned in the grant and map, the original of which former and copy of which latter are on file in the records of this case," as by the inspection of the transcript of the record of the said district court, which was brought into the Supreme Court of the United States by
136 virtue of an appeal, agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of December, in the year of our Lord one thousand *eight thousand* eight hundred and fifty-nine, the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and was argued by counsel, on consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said district court in this cause be, and the same is hereby, affirmed:

12 MARCH.

You, therefore, are hereby commanded that such further proceedings be had in said cause as, according to right and justice and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the honorable Roger B. Taney, chief justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-nine.

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

137 Endorsed: Filed January 5, 1861.
W. H. CHEVERS, *Clerk.*

Decree.

At a stated term of the district court of the United States for the northern district of California, held at the court-room in the city of San Francisco, on Friday, the twenty-ninth day of November, 1861.

Present: Hon. Ogden Hoffman, district judge.

THE UNITED STATES *vs.* JUAN JOSÉ GONZALES. } No. 104.

It appearing to the court that on the fifth day of January, 1861, the mandate of the Supreme Court of the United States was filed in this cause; and that on the seventh day of May, 1861, an order was entered directing the return of the official survey of the land confirmed in this case; that on the twenty-fifth day of May, 1861, in pursuance of said order, the surveyor general of the United States for California returned to this court a certified copy plat of his said survey; that thereupon the claimants, by their attorney, filed exceptions to said survey; that testimony in support of said exceptions was duly taken, and that upon said exceptions and testimony the cause came regularly to a hearing, all parties being heard by their respective attorneys, and due deliberation had in the premises: Now, therefore, in con-
138 sideration whereof, it is ordered, adjudged and decreed that the said exceptions be, and the same hereby are, overruled, and

that the said survey be, and the same hereby is, approved and confirmed.

And it is further ordered, adjudged, and decreed that the claim of the said claimants is a good and valid claim for the land granted by the Mexican government to Juan José Gonzales, known as "San Antonio ó el Pescadero," and lying and being in the county of Santa Cruz, northern district of California, and that the same be, and hereby is, confirmed to the said Juan José Gonzales to the extent of three thousand two hundred and eighty-two acres and twenty-two one hundredths of an acre ($3,282\frac{22}{100}$ acres) located and surveyed by the surveyor general of the United States for California, as shown by the said plat filed May 25th, 1861, the field-notes of which survey were approved by said surveyor general April 10th, 1861; and to which said plat, certified by said surveyor general May seventh, 1861, and marked "Approved November 29th, 1861, Ogden Hoffman, district judge," and annexed to and made a part of this decree, reference is had for more particular description of the land hereby confirmed to the said claimant.

OGDEN HOFFMAN, *U. S. Dist. Judge.*

Endorsed: Filed November 29, 1861.

W. H. CHEVERS, *Clerk.*

(Here follows plat, marked page 138.)

138 *Boundaries.*

No.	Course.	Dist.	No.	Course.	Dist.
1	N. 64½° W.	18.00	14	N. 8 ° E.	95.50
2	16½ E.	71.00	15	60 W.	2.25
3	24½ W.	6.50	16	23 E.	3.00
4	61½	17.00	17	26¾ E.	20.71
5	5½	4.00	18	47	15.90
6	19½	6.50	19	76	3.50
7	21½	9.50	20	14¾	7.10
8	37½	89.00	21	65¼	33.50
9	38½	21.00	22	75	6.20
10	East.	1.55	23	S. 58	10.30
11	North.	52.18	24	51	10.90
12	N. 17½ W.	4.00	25	N. 66 E.	42.20
13	4½ E.	20.00	26	S. 5 ° W.	369.00
		260.23			619.86
					260.23
	Total.....	.....	.....	.....	880.09 *chs.* = 11 *m.* 9 *lks.*

	Chs.	*lks.*
In present account are charged courses Nos 25 and 26, amounting to	411	20
And connection between point of beginning and Willow tree B. 12	26	50
In all.....	437	70 = 5 *m.* 37 *chs.* 70 *lks.*

UNITED STATES SURVEYOR GEN'L'S OFFICE,
San Francisco, California, May 7th, 1861.

I hereby certify this to be a full, true, and correct copy of the original plat on file in this office of the official survey of the rancho de "San Antonio, or Pescadero," finally confirmed to Juan José Gonzales.

In witness whereof, I have hereunto signed my name and caused the seal of this office to be affixed this seventh day of May, A. D. one thousand eight hundred and sixty-one.

J. W. MANDEVILLE,
U. S. Surveyor Gen'l, Cal'a.

The field-notes of the rancho "San Antonio, or Pescadero," and from which this plat has been made out, have been examined and approved, and are on file in this office.

SAN FRANCISCO, *California, April 16th*, 1861.

(Signed) J. W. MANDEVILLE,
[L. S.] *U. S. Surv'r Gen'l, Cal'a.*

Approved Nov'r 29th, 1861.

OGDEN HOFFMAN, *Dist. Judge.*

139 *Grant.*

U. STATES
v.
M. A. PICO.

Por cuanto Don Simeon Castro ha pretendido para su beneficio personal y el de su familia el parage conocido con el nombre de Punta de Año Nuevo colindante al oriente con la sierra al pte. con el mar al nte. con el rancho de Dn. Juan Gonzales y al sur con el de Dn. Ylaria Buelna practicadas previamte. las diligencias y averiguaciones concernientes segun lo dispuesto por leyes y reglamtos, usando de las facultades que me son conferidas á nombre de la nacion Mejicana declarandole la propiedad de el por las presentes letras sugetandose á la aprovacion de la exma. junta departam'l y á las condiciones sig'tes:

1a. Podra cercarlo sin perjudicar las travecias caminos y servidumbres; lo disfrutara libre y exclusivamente destinandolo al uso y cultivo que mas le acomode pero dentro de un año fabricara casa y estara habitada.

2a. Solicitará del juez respectivo le de posecion juridica en virtud de este despacho por el cual se demarcaran los linderos en
140 cuyos limites pondrá á mas de las mojoneras algunos arboles frutales ó silvestres de alguna utilidad.

3ra. El terreno de que se hace mencion es de cuatro sitios de ganado mayor segun esplica el diseño que corre agregado al espediente respectivo. El juez que diere la posecion lo hara medir conforme á ordenanza quedando el sobrante que resulte á la nacion para los usos conven'tes.

4a. Si contraviniere á estas condiciones perderá su derecho al terreno y será denunciable por otro.

En consecuencia mando que teniendose por firme y valedero el presente titulo se tome razon de el en el libro que corresponde y se entregue al interesado para su resguardo y demas fines.

Dado en Monterey á veinte y siete de Mayo de mil ochocientos cuarenta y dos.

Translation of grant.

Whereas Don Simeon Castro has solicited, for his personal benefit and that of his family, the location known by the name of
141 Punta de Año Nuevo, bordering to the east on the sierra, to the west on the sea, on the north on the rancho of Don Juan Gonzales, and to the south on that of Don Ylaria Buelna, after previously having taken the necessary action and made the necessary investigations as is required by law and regulations, in exercise of the powers vested in me in the name of the Mexican nation, I have concluded to grant him the mentioned land, declaring it his property by the present letters patent, subject to the approbation of the excellent departmental assembly, and to the following conditions:

1st. He may fence it without prejudicing the crossings, roads, and servitudes; he will enjoy it freely and exclusively, appropriating it to the use or culture that best may suit him; but within one year he will build a house, to be inhabited.

2nd. He wi l solicit of the respective judge to give him juridical possession in virtue of this document, by whom the boundaries will be marked, on the extremities of which he will put, besides the landmarks, some fruit trees or wild ones of some utility.

142 3rd. The land mentioned is four square leagues (sitios de ganado mayor,) as is explained in the sketch which follows, annexed to the respective expediente. The judge who shall give the possession will cause it to be measured conformable to ordinance, leaving the surplus that may result to the nation for convenient purposes.

4th. If he should violate these conditions, he will lose his right to the land, and may be denounced by any other party.

Consequently, I order that the present title-deed being held as firm and valid, it be entered in the corresponding book and delivered to the interested party for his security and other purposes.

Given in Monterey 27th of May, 1842.

Filed in office August 31st, 1852.

GEO. FISHER, *Sec'y.*

(Here follows diseño, marked page 143.)

144 *Decree of confirmation.*

In the district court of the United States for the northern district of California.

THE UNITED STATES, appellants, *vs.* MARIA A. PICO *et al.*, heirs of the late Simeon Castro, appellees. } Decree of confirmation.—Stated term, December 4, 1856.—No. 70.

This case coming on this day to be heard upon the transcript of the proceedings, and the decision of the board of land commissioners of

the United States to ascertain and settle the private land claims in the State of California, and the papers and evidence on which the same were founded, and the pleadings filed in this court, and counsel having been heard on part of the United States and for claimant, in consideration of all which the court is of opinion that there is no error in the decision of the board, and that the same should be, and is hereby, affirmed.

And this court doth order, adjudge, and decree, that the title of the claimants, Maria A. Pico *et al.*, heirs of Simeon Castro, deceased, to the lands described in said transcript, is valid, and the same is hereby confirmed. The land of which confirmation is hereby made to
145 the said heirs of Simeon Castro, deceased, is the same which was granted by the Mexican government in May, 1842, to the said Simeon Castro, and known by the name of Punta de Año Nuevo, and bounded and described as follows, to wit: Bordering on the east on the sierra, to the west on the sea, to the north on the rancho of Don Juan Gonzales, and to the south on the rancho of Doña Ylaria Buelna, said tract being in longitude from north to south four leagues, a little more or less, and in latitude from east to west one league, containing four square leagues, reference for further description being made to a map made part of document B, and filed in this case, as showing the tract of which confirmation is hereby made.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed: Filed Dec. 4, 1856.
JOHN A. MONROE, *Clerk.*
By WM. H. CHEVERS, *Deputy Clerk.*

146 I, William H. Chevers, clerk of the district court of the United States for the northern district of California, do hereby certify that the annexed and foregoing one hundred and forty-five consecutively numbered pages, together with the maps and plats included therein, exhibit a full, true, and correct transcript of the record of proceedings before the late board of U. S land commissioners, as the same is on file in my office; and of the papers, evidence, pleadings, orders, opinions, and decrees, now on file in my office in the case of the United States *versus* Manuel Rodriguez, number 271.

In witness whereof, I have hereunto set my hand, and affixed the [SEAL.] seal of the said district court, this thirteenth day of October, in the year of our Lord one thousand eight hundred and sixty-two, and of our independence the 87th.

W. H. CHEVERS, *Clerk.*

[Here follows map, marked end of record.]

Field notes of the Rancho Punta del Año Nuevo.

No.	Course.	Distance.	No.	Course.	Distance.
1	S. 33¼ W.	1.20	59	S. 71¾ E.	5.00
2	6	15.80	60	54¼	5.00
3	1¼ E.	8.30	61	76½	9.00
4	33¾ W.	8.50	62	45¾	10.00
5	South	10.00	63	N. 69½	8.00
6	S. 7 W.	14.50	64	S. 51½	8.00
7	21½	25.00	65	49½	25.00
8	10	9.60	66	39½	23.00
9	22½	16.40	67	57¾	7.50
10	7½	6.50	68	86¾	5.00
11	6½ E.	16.90	69	50½	7.00
12	22½ W.	9.20	70	32	26.00
13	24½ E.	12.00	71	20	21.00
14	30½	20.00	72	55	6.50
15	20½ W.	6.50	73	5	37.00
16	10 E.	15.80	74	22½	13.00
17	46½	12.50	75	7½	14.00
18	13	5.70	76	3 W.	15.00
19	33	6.70	77	38½	5.20
20	26	17.40	78	78½ E.	22.00
21	N. 63¾	4.20	79	12	6.50
22	S. 26½	15.00	80	52½	12.00
23	84 W.	6.50	81	N. 54	5.50
24	7 E.	4.00	82	S. 43½	6.50
25	68½	4.50	83	45½	6.40
26	10	18.70	84	N. 79	13.00
27	20½	13.00	85	S. 83½	17.50
28	21½ W.	9.40	86	19¾	8.00
29	5 E	9.40	87	7½ W.	9.50
30	49 W.	4.75	88	20½ E.	4.00
31	50 E.	6.90	89	34	4.00
32	10½ W.	6.60	90	51½	16.00
33	8 E.	10.50	91	31½	17.00
34	18	11.40	92	4½	27.00
35	47	8.00	93	6 W.	18.00
36	2½ W.	17.70	94	8	17.00
37	½ E.	39.00	95	5¾	16.00
38	19½	8.00	96	16½	21.00
39	41½	4.00	97	S. 34½ E.	4.30
40	50½	10.90	98	62¾	5.40
41	6¾	15.40	99	N. 80	4.50
42	42½	11.00	100	S. 48	12.50
43	18	5.00	101	8½	17.00
44	1½ W.	6.50	102	25 W.	14.00
45	9½ E.	9.00	103	49¾	14.20
46	18¾	7.50	104	N. 33	6.80
47	2 W.	7.80	105	S. 29	4.30
48	37½ E.	4.20	106	35½ E.	8.80
49	27	3.70	107	82½	9.50
50	33	11.50	108	N. 14½ W.	3.70
51	21¾ W.	4.20	109	24 E.	11.40
52	30½ E.	1.50	110	43	8.70
53	N. 73¾	4.70	111	61½	14.40
54	30½	4.00	112	46	13.00
55	21¾	3.50	113	60½	18.00
56	75½	15.00	114	49	7.50
57	S 71½	5.00	115	S. 88¼	10 00
58	N. 80¾	13.00	116	N. 63 E.	3.20

Field-notes, &c.—Continued.

No.	Course.	Distance.	No.	Course.	Distance.
117	N. 46 E.	12.00	129	N. 38¼ W.	335.00
118	S. 79½	12.50	130	West.	60.00
119	N. 48½	8.00	131	N. 64½ W.	73.00
120	S. 77½	10.00	132	16½ E.	11.00
121	69½	25.00	133	24½ W.	6.50
122	42	5.00	134	61¼	17.00
123	54¼	49.00	135	5¼	4.00
124	38½	18.00	136	19½	6.50
125	52¼	4.00	137	21¼	9.50
126	N. 25½	38.20	138	37¼	89.00
127	27½ W.	175.50	139	38¼	42.00
128	6¾	252.30			

The field-notes of the rancho "Punta del Año Neuevo," and from which this map has been made out, have been examined and approved, and are on file in this office.

U. S. SURVEYOR GENERAL'S OFFICE,
San Francisco, California, September 4th, 1857.

JOHN C. HAYS,
U. S. Surveyor General, California.

U. S. SURVEYOR GENERAL'S OFFICE,
San Francisco, California.

I hereby certify this to be a full, true, and correct copy of the original plat, on file in this office, of the official survey of the rancho Punta del Año Neuvo, finally confirmed to the heirs of Simon Castro, in conformity with which the patent was issued to said heirs.

In witness whereof, I have hereunto signed my name, and caused the seal of this office to be affixed, this 4th day of October, 1862.

[L. S.]

E. F. BEALE,
U. S. Sur. Gen'l, Cal'a.

Filed November 28, 1862.